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Strengthening of the coordination of humanitarian and disaster relief assistance of the United Nations, including special economic assistance: strengthening of the coordination of emergency humanitarian assistance of the United Nations

Humanitarian assistance and rehabilitation for selected countries and regions

Report of the Secretary-General

Summary

The present report is prepared pursuant to General Assembly resolutions 66/9 and 66/120. It provides an update and analysis of the current challenges facing the delivery of humanitarian relief and rehabilitation provided by the United Nations and its partners to countries affected by natural disasters. In compliance with the Assembly's request to consolidate and streamline reports whenever possible, the two reports under the present agenda item have been consolidated into a single document covering the emergency humanitarian assistance provided for the rehabilitation and reconstruction of Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama; and the humanitarian assistance, emergency relief and rehabilitation provided in response to the severe drought in the Horn of Africa region.

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I. Introduction

1. The present report is prepared pursuant to General Assembly resolutions 66/9 and 66/120. Part II of the report covers the period from October 2011 to July 2012. Part III covers the period from January 2011 to August 2012.

II. Emergency humanitarian assistance provided for the rehabilitation and reconstruction of Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama

A. Overview

2. In October 2011, tropical depression E-12 passed through Central America causing massive flooding and mudslides in Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua, while seasonal rains and associated flooding affected Belize and Panama. Mexico was also affected by flooding and mudslides. The tropical depression affected 2 million people, including tens of thousands who were evacuated, destroyed thousands of homes and caused significant losses in agriculture and infrastructure.

3. El Salvador, Guatemala, Honduras and Nicaragua suffered the most and declared national states of emergency. Both El Salvador and Nicaragua, where rain levels were the highest registered in 50 years, requested international assistance and launched flash appeals due to the scale of flood-related needs.

4. The Governments of Costa Rica, Guatemala, Honduras and Mexico supported affected people without requesting international assistance. In Guatemala, people living in poverty, rural communities and those still in shelters as a result of the earthquake of September 2011 were particularly affected. In Honduras, the impact of the disaster and the declared emergency were limited to the southern parts of the country. The tropical depression also had limited impact in Costa Rica and Mexico. The present report highlights response efforts in El Salvador, Guatemala and Nicaragua.

B. Humanitarian response

5. The regional office of the Office for the Coordination of Humanitarian Affairs in Panama helped the Governments of the affected countries and humanitarian country teams to assess urgent humanitarian needs and prepare flash appeals. Coordination efforts were further supported by the regional risk, disaster and emergency working group, which deployed 28 experts from member organizations to support agencies and cluster/sector coordination. The Office for the Coordination of Humanitarian Affairs deployed teams from its regional office in Panama to assist the resident coordinators in coordinating the response in the three most severely affected countries (El Salvador, Guatemala and Nicaragua). This was in addition to the presence of four national staff members of the Office who were present in those countries. A six-member United Nations Disaster Assessment and Coordination Team was also deployed to Nicaragua to support the Government in assessing the damages and responding to the crisis.

El Salvador

6. Among the Central American countries, El Salvador was the hardest hit. The amount of rainfall during the 10-day storm exceeded the annual average. Ten per cent of the national territory was flooded, affecting 69 per cent of El Salvador's 262 municipalities, and causing major damage to infrastructure, including roads, bridges, shelters, schools and health facilities. In the agriculture sector, direct losses were estimated at $362 million and exacerbated the existing food crisis, with prices of staple foods increasing by as much as 70 per cent. The tropical depression was responsible for approximately $840 million in losses, representing 4 per cent of gross domestic product (GDP).

7. According to Government estimates, 1 million people were affected and at least 35 died. The Government's early warning system and preventive evacuations helped prevent further loss of lives and more extensive losses in terms of infrastructure and livelihood. The Government of El Salvador led the emergency relief and civil protection efforts in close coordination with the international humanitarian community.

8. Upon request and in close cooperation with the Government, the international humanitarian community issued a flash appeal totalling $15.86 million to support projects for an estimated 300,000 people considered to be those most affected by the floods. An allocation from the Central Emergency Response Fund of $2.6 million covered urgent needs in food; water, sanitation and hygiene; health care, including emergency reproductive health care; shelter and shelter management; emergency education; protection, including prevention of gender-based violence; and return assistance.

9. The World Food Programme (WFP) provided assistance to 115,000 people in 60 municipalities. This included a general distribution of fortified biscuits and food rations in shelters and communities, early recovery activities, food-for-work and food-for-training schemes, and rehabilitation and reconstruction programmes. Funds mobilized through the Central Emergency Response Fund ($720,000) and the flash appeal ($3.7 million) allowed WFP to distribute approximately 4,000 tons of food.

10. Almost 200,000 people benefited from life-saving actions including the re-establishment of health-care services and facilities in affected areas. The Pan American Health Organization (PAHO) supported the Government in reinforcing epidemiological surveillance and strengthening referral laboratory capabilities. Medicine and medical supplies were distributed throughout the national health network. The Government, supported by PAHO, rehabilitated a regional hospital and a chronic renal failure clinic in Bajo-Lempa, and restocked medicines, basic medical equipment and supplies lost in the floods.

11. The International Organization for Migration (IOM) used funds from the Central Emergency Response Fund to help the Government to monitor 56,000 people who had been evacuated and housed in 669 collective centres. At least 700 families received psychosocial support and were assisted in returning to their communities, while some 3,000 people received household items. The United Nations Development Programme (UNDP) provided 870 families with small repair materials for their damaged or destroyed houses. The United Nations Children's Fund (UNICEF) distributed educational materials on hygiene standards through the sectoral commissions, directed by the Home Office, to some 950 households.

12. The World Health Organization (WHO), in conjunction with PAHO, and UNICEF improved access to safe water for more than 33,000 people in collective centres and affected communities by providing water purification and water storage, and by improving sanitation facilities. At least 3,000 families received gender-appropriate hygiene kits. To prevent the infection of health-care personnel and patients, PAHO rehabilitated wastewater systems in health community centres.

13. The United Nations Children's Fund provided educational and recreational backpacks and kits for 150 schools, benefiting 75,000 people. A total of 1,800 people (teachers, students, family, parents and community leaders) from 23 school centres were trained on Minimum Standards for Education in Emergencies, gender approaches and psychosocial care.

14. The organization also distributed 2,000 hygiene kits to families with children under the age of 5. Psychosocial care kits were provided to 3,373 people in affected communities as part of the emergency psychosocial care programme. To preserve women's dignity, UNICEF targeted the needs of elderly and pregnant women, as well as those of reproductive age, by training Health Ministry personnel on the prevention of gender-based violence.

15. The United Nations Development Programme (UNDP) provided technical assistance to support and reinforce the Government's capacity in planning early recovery initiatives. UNDP also developed a strategic framework for early recovery in line with the national development plan.

Guatemala

16. The tropical depression hit Guatemala on 12 October, creating an emergency situation throughout the country, with particularly severe consequences in seven of the country's 22 departments. The National Coordinator for Disaster Reduction issued an institutional red alert, focused on the most-affected Pacific Coast region, and a national state of public calamity decree was issued on 18 October. The impact of the tropical depression aggravated pre-existing humanitarian needs, including the plight of 2,200 people displaced by the earthquake that hit near Guatemala City on 19 September 2011.

17. Guatemala experienced several emergencies during the past five years: tropical depression 16 in 2008, food insecurity and acute malnutrition in 2009/2010, and Tropical Storm Agatha and the eruption of the Pacaya volcano in 2010. Those emergencies affected the country's food security situation, which is illustrated by the prevalence of stunting in children under the age of 5; at 49.8 per cent, Guatemala has the highest rate of stunting in Latin America and the fourth highest worldwide. Rates of stunting are most severe in rural areas (over 80 per cent in some areas), among indigenous communities (65.9 per cent), and among infants whose mothers have not received a formal education (69.3 per cent).

18. In response to the disaster, the Government initiated bilateral resource mobilization strategies to cover gaps and assist affected people. The food, water, sanitation and hygiene, nutrition, health-care and shelter clusters were activated to help the Government collect data, share information and prioritize and coordinate joint responses. Coordination between humanitarian actors and authorities supported needs identification, the release of emergency funds and the prioritization of a request to the Central Emergency Response Fund. The United Nations system

mobilized $5.6 million, which included $2.2 million from the Central Emergency Response Fund and $1.5 million from the Food and Agriculture Organization of the United Nations (FAO), to provide help, through the clusters, to more than 135,000 people following the September earthquakes and tropical depression E-12.

19. The food cluster estimated that 135,000 people needed food assistance. Funding from the Central Emergency Response Fund enabled the purchase of 1.133 tons of corn, vegetable oil and corn soya blend, which Brazil complemented with a donation of beans. Food distributions covered 13,314 families (66,570 people), or approximately half of the estimated people in need.

20. Priority was given to people living temporarily in shelters and improvised community shelters, and to families in remote communities, particularly children suffering from acute malnutrition, and pregnant and lactating women. Food rations were distributed in targeted communities through community councils and in coordination with local authorities.

21. The Government's integrated health-care system and PAHO provided health care to 128,738 people. Funding from the Central Emergency Response Fund enabled health brigades to provide assistance in shelters and affected communities (3,191 care interventions). Affected families also received mental health and psychological support. Medical surveillance was strengthened in affected areas, especially in early warning and the prevention of disease outbreaks. A total of 3,915 people received training in the prevention of water, food and vector-borne diseases. Interventions also included the timely identification and referral of pregnant women at risk, and the provision of contraceptives and rape kits to the Ministry of Health. These items were distributed in shelters, communities and health-care facilities.

22. Children under the age of 5 and women with acute malnutrition were identified through local screenings and received assistance. Some 21,000 children and women received supplies for micronutrient supplementation and treatment of severe acute malnutrition. Nutritional counselling was also provided in shelters and at the community level to promote breastfeeding and complementary feeding.

23. A total of 1,500 families in shelters and communities received non-food items (kitchen, hygiene and comfort kits). With the Department of Mental Health, UNICEF provided psychological support to children and teenagers. In addition, 102 workshops were organized on preventing violence in emergency situations, focusing on human rights, disaster risk reduction, women's rights and reproductive health.

24. The water, sanitation and hygiene cluster helped to restore sanitation in affected communities and shelters. This included providing safe drinking water for 43,545 people by clearing and disinfecting wells, and rehabilitating water, sanitation and excreta disposal systems in affected communities. Shelters and communities also received operational and technical support for solid-waste collection and management to reduce the risk of spreading diseases.

Nicaragua

25. The Government of Nicaragua reported that 87 of the country's 153 municipalities suffered damages and nearly 150,000 people were affected. Economic losses totalled $44 million, or 6.8 per cent of GDP. According to the Government's national system for preventing, mitigating and attending to disasters

(SINAPRED), the majority of losses were in infrastructure, housing and agricultural production. On 17 October, the President declared a countrywide state of disaster and asked the United Nations system in Nicaragua to activate international assistance mechanisms.

26. The resident coordinator called on the United Nations Disaster Management Team and a United Nations emergency technical team to support coordination of the response, and requested the deployment of a United Nations Disaster Assessment and Coordination Team. An inter-agency emergency response plan was triggered, and a response strategy was elaborated under a sector/cluster approach with SINAPRED and the Ministry of Foreign Affairs.

27. A flash appeal was launched in October 2011, requesting $14 million for projects in the priority sectors identified by the Government: food aid, health care, shelter, agricultural livelihoods, water, sanitation and hygiene, and early recovery. Projects in those sectors supported and complemented national humanitarian efforts over six months and benefited approximately 100,000 people. More than $10.5 million was mobilized for the emergency. This included $5.4 million through the flash appeal, of which the Central Emergency Response Fund provided $2 million.

28. On behalf of the food and nutrition security sector, WFP and FAO carried out an emergency food security assessment with the Government. WFP provided food assistance to 118,500 people (60,435 women and 58,065 men). FAO reached 10,458 small-scale farmers in 26 municipalities with support to re-establish food production and livelihoods, including the distribution of seeds, corn, fertilizers and storage facilities.

29. In collaboration with PAHO, WHO supported the Ministry of Health's response through the deployment of medical brigades in shelters and isolated communities in the country's four most affected departments. This covered approximately 300,000 people. PAHO/WHO also supported vector-borne disease control, including providing health education and chlorine to improve access to safe water, thereby benefiting some 52,000 households. The response from PAHO/WHO contributed to a decline in the number of cases of dengue and leptospirosis.

30. Actions in the water, sanitation and hygiene sector were supported by UNICEF, which resulted in improved quality of drinking water, increased knowledge of hygiene practices, and improved sanitation facilities for 31,418 people in 99 communities within four municipalities. The main activities were cleaning 367 wells, distributing 1,487 ceramic water filters and other drinking storage, constructing 320 latrines and promoting hygiene.

31. With flash appeal funding, IOM and the United Nations Population Fund (UNFPA) distributed 1,000 hygiene, kitchen and comfort kits to improve the living conditions of 5,933 people in shelters. This response included support to the Nicaraguan Government in managing shelters, including elaborating strategies for the prevention of gender-based violence in shelters.

32. The United Nations Development Programme initiated early recovery activities to support the local government response system in seven municipalities. Cash-for-work schemes were implemented, benefiting women, children and elderly people. Feedback from community members highlighted appreciation of the work scheme, which allowed beneficiaries to prioritize support for priority needs, such as

food, medicine and the rehabilitation of houses. Capacities of municipalities and the housing institute were strengthened to accelerate damage assessment and response.

III. Humanitarian assistance, emergency relief and rehabilitation provided in response to the severe drought in the Horn of Africa region

A. Overview

33. In 2011, parts of the Horn of Africa faced a severe drought due to a La Niña event triggered by below-normal sea-surface temperatures in the eastern Pacific. Food security deteriorated in Djibouti, Ethiopia and Kenya, while famine conditions were declared in several regions of Somalia in July 2011. At the height of the crisis, 13.3 million people were affected in the region, particularly among pastoralist and agropastoralist communities. The crisis exposed vulnerabilities specific to the affected countries. Suffering and mortality were most extreme in Somalia, where people's ability to cope with disasters had been eroded as a result of years of conflict and restricted access to remittances and humanitarian assistance. The 2012 *Real-Time Evaluation of the Humanitarian Response to the Horn of Africa Drought Crisis* concluded that most vulnerable people were reached in a timely manner in Ethiopia and Kenya, but that the international community failed to prevent famine in Somalia.

34. Drought and food insecurity are recurrent in the Horn of Africa, and lessons must be learned from the crisis in 2011 on how to better support Governments in strengthening communities' ability to prevent, mitigate, prepare for and respond to the impact of future droughts. Following good rains between October and December 2011, and as a result of sustained humanitarian assistance, drought conditions eased in Djibouti, Ethiopia and Kenya in early 2012, and famine conditions are no longer present in Somalia.

35. Without continued assistance, the fragile gains could be reversed. The latest forecasts indicate that food security is worsening again owing to erratic rains and high food prices in parts of Ethiopia, Kenya and Somalia. As of July 2012, at least 9.1 million people still needed food assistance in Djibouti, Ethiopia, Kenya and Somalia. Of the $2.49 billion requested through the humanitarian appeals in those four countries in the second half of 2012, $1.22 billion (49 per cent) had been received by mid-July. Continued funding is required in the coming months to ensure that Governments, supported by the international humanitarian community, can deliver urgently required assistance, and to ensure that initiatives that build the resilience of people and livelihoods are successful in the long term.

B. Humanitarian response

Djibouti

36. Djibouti has faced six consecutive years of drought and serious rainfall deficit. This culminated in large-scale food insecurity during the 2011 drought, affecting 206,000 people. Low food production was compounded by the drastic rise in global food prices, further eroding the coping mechanisms of the most vulnerable people.

Drought conditions led to large-scale movements of people, especially from rural areas, within their regions or towards the capital.

37. Poorer households that could not afford to migrate suffered a 70 to 100 per cent loss in livestock. The Government and humanitarian partners responded through agricultural drought response programming that benefited 80,000 people; an animal health programme that supported the distribution of vaccines, medicine and micronutrients for 180,000 livestock; and a food-for-assets programme that reached 10,000 households with water assistance and 23,000 people with food assistance. Approximately 20,000 children were treated for malnutrition, with a recovery rate of 72.5 per cent. An additional 4,600 moderately malnourished children under the age of 5 and pregnant and lactating women received supplementary feeding through 36 health-care centres around the country. To cover outstanding humanitarian needs, the Consolidated Appeal for Djibouti, launched at the beginning of 2012, appealed for $79 million, of which 39 per cent had been received by mid-July.

38. High operating costs, among other factors, have limited the number of non-governmental organizations operating in Djibouti, meaning that agencies struggled to adequately scale up the drought emergency response. However, response capacity improved owing to the arrival of several non-governmental organizations and IOM in 2011, and as a result of efforts to build local capacity, particularly in the food security sector. Efforts are under way to strengthen disaster risk management, including the collection and dissemination of early warning information, but these efforts are constrained by a lack of funding. Djibouti received $6 million from the Central Emergency Response Fund in 2011 and a further $4 million in 2012.

Ethiopia

39. The La Niña event in the eastern Pacific resulted in poor rains between October and November 2010; failed rains between March and April 2011 in Ethiopia's southern pastoralist lowlands; and failed rains between February and May 2011 in the central and south-western highlands. The La Niña-induced drought also caused severe water shortages and led to deepening food insecurity in affected areas.

40. Food distributions were scaled up, from reaching 2.8 million people in February 2011 to a total of 4.56 million people in July 2011. In the most drought-affected areas, an additional 3 million people received an extra round of food assistance in January 2012. In addition, about 6.5 million drought-affected people out of 7.6 million regular beneficiaries of the Productive Safety Net Programme, a mechanism supporting food security and protecting assets at the community and household levels, received additional emergency assistance when the Government triggered the programme's risk financing mechanism.

41. By the end of the year, almost 280,000 children under age 5 had been treated for severe acute malnutrition. The treatments performed exceptionally well against international nutrition indicators: out of approximately 150,000 children discharged from therapeutic feeding programme sites in the first six months of the year, 82 per cent recovered, while the death rate averaged 0.4 per cent. This is far below national standards and those set by the Humanitarian Charter and Minimum Standards in Humanitarian Response (Sphere standards) (less than 10 per cent). More than 1 million moderately malnourished children under the age of 5 and pregnant and

breastfeeding women received targeted supplementary food, preventing them from sliding from moderate to severe malnutrition. Health partners ensured expanded surveillance and case management for disease outbreaks, including measles, malaria, meningitis and acute watery diarrhoea, and supported the roll-out of an integrated national measles and polio vaccination campaign that targeted 7 million children in six drought-affected regions of Ethiopia.

42. At the height of the severe water shortages in April and May 2011, water-trucking interventions reached more than 2 million people. Humanitarian and development organizations supported the Government in rehabilitating boreholes, with more than 90 per cent of boreholes in drought-affected areas functional by the end of the year. Priority livelihood responses included providing seeds and cuttings to drought-affected smallholder farmers, animal health care, supplementary feeding and de-stocking (commercial and slaughter) for drought-affected pastoralists. Emergency education support was provided to more than 87,000 children estimated to have dropped out of school as a result of the drought.

43. The Real-Time Evaluation recognized the efforts of the Government and partners to increase preparedness levels, establish longer-term food security and nutritional programmes, and enhance emergency response capacity to prevent the emergence in Ethiopia of worst-case conditions, such as those found in Somalia and even in pockets of northern Kenya. At the height of the crisis, Government-led emergency coordination mechanisms were expanded to include the international humanitarian community, which improved overall coordination and response. The Real-Time Evaluation also noted that humanitarian strategies, planning and resource mobilization were strong in Ethiopia owing to good partnerships between the Government, donors, the United Nations and non-governmental organizations. Donor support to Ethiopia has been outstanding: the $398.4 million in humanitarian requirements identified for the second half of 2011 has been funded.

44. By mid-2012, Ethiopia was confronting a renewed crisis in parts of the central and southern highlands due to the poor performance of the rains between April and June 2012 and, in some cases, failure of the associated harvest. The humanitarian community continues to work with the Government to assess the situation and provide an adequate solution to save lives, while also strengthening efforts to protect livelihoods and build resilience among the most vulnerable households.

Kenya

45. Drought conditions in Kenya's northern and north-eastern districts developed after the poor performance of the rains between March and June 2011. At the height of the drought, 3.75 million people were food insecure, particularly in areas experiencing chronic poverty, limited investment and intermittent conflict. About 1.4 million people, predominantly in the northern and north-eastern pastoral areas, were classified in the emergency phase of the Integrated Food Security and Humanitarian Phase Classification following the long rains assessment in August 2011. By that time, an estimated 385,000 children under the age of 5 and 90,000 pregnant and breastfeeding women were suffering from moderate acute malnutrition and severe acute malnutrition. The eastern parts of Turkana, in north-eastern Kenya, reported a rate of 37.4 per cent global acute malnutrition, which is the highest malnutrition rate recorded in Kenya in the past decade.

46. In response to drought-induced water shortages and deepening food insecurity in affected areas, humanitarian organizations supporting the Government reached 88 per cent of people in need with water, sanitation and hygiene interventions, and they had distributed food to 1.4 million Kenyans and 550,000 Somali refugees by the end of 2011. Nutrition interventions reached 168,000 children and 33,000 pregnant and breastfeeding women. Donors were generous in their response to the increasing needs. As drought conditions in Kenya intensified, requirements under the Consolidated Appeal increased to $742 million, which is the largest amount ever requested for Kenya through a Consolidated Appeal. As of 15 November 2011, $518 million (70 per cent) had been received, exceeding contributions in any previous year.

47. The scope of the crisis reinforced plans by the Government and its humanitarian partners to adopt an integrated approach that includes scaling-up immediate life-saving assistance, while addressing the underlying drivers and long-term impact of food insecurity in order to aid recovery. However, as the Real-Time Evaluation noted, early warning information in northern Kenya failed to mobilize a timely response, until the Government declared a national disaster. The Government has established coordination mechanisms at the national, regional and subregional levels to deal with humanitarian issues requiring sustained support, such as through the Drought Resilience Initiative of the Intergovernmental Authority on Development (IGAD), which was agreed at the summit between IGAD and Heads of State of the East African Community, held in September 2011, and reinforced at the joint ministerial and high-level development partners meeting of IGAD, held in April 2012.

48. As a result of good rains between October and December 2011 and sustained humanitarian assistance, the number of people requiring food assistance decreased from 3.75 million, at the height of the drought, to 2.4 million by mid-2012. However, the food security situation has deteriorated for thousands of people due to poor rains between March and May 2012 across the north-eastern pastoral areas and the south-eastern and coastal lowlands. The humanitarian situation in North-Eastern Province may deteriorate further due to insecurity and lack of access for humanitarian organizations.

Somalia

49. Somalia's food security situation deteriorated largely as a result of poor performance of rains between April and June 2011 and the associated drought. Food insecurity was exacerbated by conflict and by lack of access in the most affected areas. Between late July and September 2011, famine had been declared in six regions of southern Somalia. The number of people requiring food assistance reached 4 million by September 2011. Famine conditions developed as communities' coping mechanisms had been exhausted, accompanied by a massive rise in food prices. Even with normal rainfall, Somalia produces less than half of its cereal requirements and is heavily dependent on imports and food aid.

50. Seventy per cent of people in need in Somalia were and continue to be from the south. The combination of drought and conflict in the area during the crisis of 2011 meant that many people were unable to receive assistance in their villages. This led to large-scale movements of people within Somalia and across its borders. Many people, particularly women and children, arrived in refugee camps in

Djibouti, Ethiopia and Kenya, severely malnourished and in dire conditions, given their already poor physical state in the areas of origin. Malnutrition rates among affected Somalis far exceeded the emergency threshold for global acute malnutrition, which is set at 15 per cent. Levels of severe acute malnutrition rose as high as 15.8 per cent (mainly in the south).

51. The humanitarian response to the rapidly growing needs focused on health and nutrition, water, sanitation and hygiene, food assistance, agriculture, livelihoods, shelter and non-food items. By the end of 2011, nutrition services had been provided to 495,000 children under the age of 5, including almost 320,000 children suffering from moderate acute malnutrition and almost 140,000 children suffering from severe acute malnutrition. The number of people requiring food assistance rose from 3.7 million in August to 4 million in September. Humanitarian organizations reached about half of the population in need by the end of October. Access to primary and/or secondary health care was improved for 1.3 million people, while 1.2 million people were reached with potable water. Humanitarian organizations worked with new local partners and enhanced the use of cash transfers, vouchers and employment schemes to reach the most vulnerable people in areas where access was extremely limited.

52. Despite these achievements, humanitarian assistance was limited, largely due to lack of access, conflict and associated insecurity, which heavily affected the ability of humanitarian organizations to deliver assistance. Restrictions imposed by Al-Shabaab, including the ban placed on six United Nations agencies and 10 non-governmental organizations during the crisis, further prevented assistance from reaching affected communities. Additionally, counter-terrorism caveats of key donors initially had a negative impact on funding for humanitarian programmes in Somalia. Humanitarian partners in Somalia carried out an emergency revision of the Consolidated Appeal for 2011 in early August 2011. The revised Appeal reflected an increase in requirements from $530 million at the beginning of the year to $1.06 billion for the second half of the year. A total of $1.3 billion was raised in 2011 (123 per cent of requirements), making the Consolidated Appeal for Somalia one of the best-funded humanitarian appeals worldwide. However, funding commensurate to the needs was received only after famine was declared.

53. Over the past year, the number of people in need has steadily decreased, especially in Mogadishu, as a result of declining inflation, improved access to labour, increased purchasing power and better access to food. However, the humanitarian situation remains critical. As of August 2012, 2 million people remain in crisis, unable to fully meet basic needs without assistance, according to the Food Security and Nutrition Analysis Unit. An additional 1.8 million people are in a stressed food security situation, at risk of sliding back into crisis unless they receive sustained assistance. Mortality and malnutrition rates in Somalia have improved dramatically, but they remain among the highest in the world. An estimated 236,000 children are acutely malnourished. This represents a 27 per cent reduction since the beginning of 2012, and a 50 per cent reduction since the declaration of famine in July 2011. Conflict and lack of access to people in need remain major challenges, as increased military operations in southern and central regions over the last few months of 2011 and the first half of 2012 resulted in new displacements in Bakool, Bay, Gedo, Hiraan and Lower Juba.

C. Refugees

54. From January 2011, growing numbers of Somali refugees started crossing into Kenya. The number reached a daily average of between 700 and 1,000 Somalis by the time famine was declared in Somalia in July. Approximately one quarter of the children from southern Somalia arriving in the Dadaab refugee complex were malnourished. By the end of September, there were about 450,000 refugees in Dadaab, and almost 591,000 refugees and asylum seekers in Kenya. The five-fold increase in refugee numbers compromised the quality of service delivery and further exacerbated existing environmental concerns, such as deforestation and tensions between the host and refugee communities. Three workers from non-governmental organizations were abducted from Dadaab in the second week of October, which prompted a Kenyan military incursion into Somalia. Arrivals fell dramatically to approximately 100 per day due to increased insecurity along the Kenya/Somalia border, and registrations were stopped for new asylum seekers from Somalia.

55. In Ethiopia, increased numbers of Somali refugees started to arrive in Dollo Ado at the beginning of 2011. The number peaked at nearly 2,000 new arrivals per day in June and early July, before dropping to some 300 per day by the end of July. The number of Somali refugees in Dollo Ado more than tripled between January and December 2011: it jumped from less than 40,500 at the start of 2011 to nearly 142,300 by the end of 2011. The Real-Time Evaluation noted that this large-scale influx put a massive strain on existing resources and imposed new demands on the Office of the United Nations High Commissioner for Refugees (UNHCR), the Government Administration for Refugee and Returnee Affairs, and humanitarian partners. This delayed the roll-out of assistance programmes. Combined with people's poor nutritional status on arrival and the magnitude of the influx, there were exceptionally high rates of infant mortality, morbidity and malnutrition among refugees in Dollo Ado.

56. By mid-2012, the number of Somali refugees in the Horn of Africa had passed 1 million. Refugees cited insecurity and diminishing food resources as the main reasons for their continued displacement. The arrival rate in 2012 is significantly slower than in 2011, with 30,000 new arrivals registered in Kenya and Ethiopia in the first six months of 2012, compared with 137,000 during the same period last year. In addition to the 1 million refugees, more than 1.3 million Somalis (out of the estimated population of 7.5 million) are internally displaced.

D. Preparedness and disaster risk reduction

57. Cyclical droughts and other hazards are inevitable, but the impact of humanitarian emergencies on the scale of the 2011 drought in the Horn of Africa can be mitigated. Investing in preparedness and disseminating early warning information, from community to regional levels, need to be followed by early action to mitigate the humanitarian impact of natural disasters. This must be combined with investments in resilience-building activities in countries that are susceptible to successive shocks. The Real-Time Evaluation found that although the humanitarian response was largely successful in Ethiopia and Kenya, it was insufficiently prompt. The Famine Early Warning System Network accurately predicted extreme conditions as early as 2010. Together with other early warning information, this prompted some early action in Ethiopia, but not in Kenya and Somalia.

58. Building on earlier prevention and preparedness work, and on the humanitarian response of 2011, regional humanitarian actors continue to work with Governments to strengthen communities' ability to mitigate, prepare for and respond to future droughts. To respond to recurring disasters, local governance and communities' ability to prepare for and respond to disasters should be strengthened, as should early warning capacity at the local, regional and national levels. Early warning systems should be community-based, monitor household vulnerability and poverty, and provide sufficient lead time for disaster preparedness for the most vulnerable people. Establishing and empowering community-based organizations in this regard is likely to expedite risk mitigation and recovery processes, as Government responses may be slower to mobilize. Regional and national institutions should have basic capacity to monitor disasters, mitigate their impact and coordinate disaster response. In Ethiopia, an emergency coordination centre has been established and equipped with the support of UNDP, to improve the analysis and dissemination of early warning information, and to improve the coordination of emergency efforts. Regional humanitarian organizations also advocate integrated and early humanitarian action to prevent crises from escalating, including by linking humanitarian actions with development priorities as a way to address the chronic nature of these crises. Community risk reduction and climate-adaptation projects, such as the management of natural resources, small-scale water development and irrigation schemes, have contributed to building community resilience over the past years in the region.

E. Recovery, rehabilitation and resilience

59. The Real-Time Evaluation found that development efforts struggled to keep pace with successive shocks across the Horn, resulting in an inability to save livelihoods and lives. Regional and Government leadership is paramount for ensuring that resilience-building continues beyond the emergency and recovery phase, and there has been important progress in this regard. Regional bodies and Governments are taking greater responsibility for resilience initiatives, such as the Drought Resilience Initiative, which was agreed by IGAD and the Heads of State of the East African Community at their summit in September 2011, and is supported by the United Nations.

60. To support the transition from humanitarian response to development, a regional inter-agency plan of action for the Horn of Africa was rolled out under the leadership of the Emergency Relief Coordinator and the Chair of the United Nations Development Group. It forms the basis for country-level plans to be developed by national Governments and supported by the United Nations. These plans focus on mitigating the impact of food insecurity and malnutrition, as well as promoting early recovery and livelihood resilience.

61. Many programmes in the Horn supported recovery and helped build resilience in parallel to the emergency response. In Somalia, community appeals for more agriculture and livelihood support were met with food-and-cash voucher schemes, allowing people to buy their own food. Disaster risk management programmes at the community level need to be strengthened further in order to restore household food security in Somalia. Donor support is required for programmes focusing on expanding indigenous grain storage facilities; increasing household food production by distributing seeds and tools to agropastoral communities; and increasing

emergency livelihood support in areas hosting high numbers of internally displaced persons. In Ethiopia, social protection was combined with interventions for enhancing livelihood productivity. Investments by the Government and the international community in more predictable systems, such as the Productive Safety Net Programme and the national nutrition programme, were largely responsible for an improved drought response, which helped save lives. The Productive Safety Net Programme is based on a twin-track approach, including measures for immediate relief and assistance to small-scale farmers with tools and technologies that will allow them to boost production. A lesson learned from this approach is that emergency food assistance should be complemented by medium- to long-term approaches to providing economic safety nets to households, thus helping them tackle the root causes of food insecurity. In the drought-affected areas of Ethiopia, water-facility rehabilitation was combined with cash-for-work, voucher-for-work and cash-transfer schemes, and complemented by health-care interventions for animals. To provide a durable solution to the constant challenge of the lack of water in the drought-prone pastoralist areas, groundwater mapping is guiding the development of new water facilities.

F. Lessons learned

62. To contribute to communities' transition from vulnerability to resilience, the humanitarian and development communities need to better coordinate their planning and response efforts, and ensure that the programme cycle adequately addresses all needs. Interventions should focus on livelihoods, crisis preparedness, building adaptive capacity and addressing different areas of governance. Ultimately, poverty's multidimensional nature must be addressed through an integrated approach that tackles the underlying root causes and drivers of vulnerability.

63. A shift towards building resilience requires harmonized and predictable multi-year funding, as opposed to project-specific funding that focuses on short-term response. This would allow aid agencies to plan and programme more strategically, invest more in staff skills and capacity, and, most importantly, make longer-term commitments to communities and local partners, including Governments. People affected by disaster would benefit from predictability and approaches to social protection that are rooted in the ability of households to plan based on their own livelihood strategies and coping mechanisms. In Somalia in particular, formulating a strategy to strengthen partnerships and mobilize resources to build resilience should be a priority.

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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Promotion of truth, justice, reparation and guarantees of non-recurrence

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, in accordance with Human Rights Council resolution 18/7.

* A/67/150.

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Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

Summary

In his first report to the General Assembly, the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence highlights the ways in which the promotion of truth, justice, reparation and guarantees of non-recurrence, conceived as a set of mutually reinforcing measures, contribute to strengthening the rule of law. He draws attention to the weaknesses of purely formal conceptions of the rule of law, emphasizing that transitional justice measures must be conceived and established in a manner compliant with the rule of law if they are to be sustainable rights-enhancing instruments.

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I. Introduction

1. In the present report, his first to the General Assembly, submitted pursuant to Human Rights Council resolution 18/7, the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence discusses transitional justice[1] and the rule of law in the light of the important discussion on the rule of law at the national and international levels taking place at the sixty-seventh session of the Assembly and the Assembly's encouragement, in paragraph 11 of its resolution 66/102, to the Secretary-General and the United Nations system to accord high priority to rule of law activities.

2. The Special Rapporteur highlights the ways in which the implementation of truth, justice, reparations and guarantees of non-recurrence following gross violations of human rights or serious violations of international humanitarian law contributes to strengthening the rule of law. He uses the experiences of countries that have implemented such measures to draw attention to the weaknesses of purely formal conceptions of the rule of law, emphasizing that transitional justice measures must be conceived and established in a manner compliant with the rule of law if they are to be sustainable rights-enhancing instruments.

II. Scope of the mandate

3. The mandate of the Special Rapporteur, as established by the Human Rights Council in its resolution 18/7, is to deal with situations in which there have been gross violations of human rights and serious violations of international humanitarian law. The Council focused on measures intended to promote truth, justice, reparations and guarantees of non-recurrence and mentioned, specifically, individual prosecutions, reparations, truth-seeking, institutional reform and vetting of public employees and officials, or an appropriately conceived combination thereof.

4. The Council emphasized the importance of a comprehensive approach that included the four elements of the mandate with a view to, among other things, restoring the rule of law and attaining other closely related goals. As framed in the resolution, the elements are intended to ensure accountability, serve justice, provide remedies to victims, promote healing and reconciliation, establish independent oversight of the security system and restore confidence in the institutions of the State and promote the rule of law in accordance with international human rights law.

III. Concept of the rule of law

5. Processes of State formation go hand in hand with processes leading to the consolidation of power, a connection that inevitably generates the risk of the predatory or otherwise abusive exercise of State power. The historical core of the

[1] As in his first report to the Human Rights Council (A/HRC/21/46), the Special Rapporteur uses herein the expression "transitional justice" to denote the comprehensive approach to the implementation of the four measures referred to in resolution 18/7. The term does not refer to a special kind of justice, and even less a form of soft justice, but to a strategy for the realization of the rights to justice, truth, reparations and guarantees of non-recurrence in the aftermath of gross violations of human rights and serious violations of international humanitarian law.

idea of the rule of law therefore centres on the need and the means to restrain such exercise. Various traditions have spelled out the ultimate justification for establishing such limits differently, while appeals have been made to the notions of rights, dignity and autonomy, and to instrumentalist considerations such as predictability and certainty, both for individuals and for collectivities.

6. The distinct but complementary means of constraining State power under the general category of the rule of law have become familiar. The first is a series of ex ante requirements for the exercise of power: no organ of the State can exercise power except on the basis of rules. Two ideas are of note here. One is the scope of the aspiration: all organs and actions of the State must have a certain characteristic, namely, being regulated. No one is above the law. In this sense, the rule of law is different from what historically was called "the rule of man". The second idea specifies that the relevant means of constraining State power is laws. Mere regulation by arbitrary decisions is insufficient.

7. If successfully implemented, even these general requirements imply significant progress in the protection of persons, for they prevent rulers from governing on the basis of whim. This alone greatly increases predictability and the margin for decision-making on the part of the governed. Many forms of arbitrariness are reduced through the adoption of these constraints on State power. The idea of the rule of law, however, its porous borders notwithstanding, is much more stringent than this. The rules that constrain State power need to be of general application, publicly promulgated, prospective, intelligible, consistent, practical or satisfiable (i.e. they cannot demand what cannot be done), stable and congruent.[2]

8. The second kind of constraint on power is a class of provisions to deal ex post with the exercise of power, allowing for the application of laws to be contested. The idea of the rule of law calls for the establishment of a complex set of institutions and procedures, including an independent and impartial judiciary that treats like cases alike and scrupulously observes guarantees of due process.

9. Courts under the rule of law are not merely norm-applying organs that determine the legal situation of individuals in a binding way, unlike secret military tribunals that may apply secret statutes, give the accused no hearing, not weigh evidence and that are not obligated to provide the reasoning for their decisions. The process of reaching decisions (involving hearings in which evidence duly gathered and made available to all parties is presented, giving parties the right to contest issues both of fact and of relevant law, and assessed by impartial and independent actors, leading to argued decisions grounded in general, public, clear and non-retroactive laws) has long been recognized as essential to the rule of law. The rule of law emphasizes the importance of courts not simply because of their output (binding decisions based on rules). Rather, it "frames, sponsors, and institutionalizes" a "culture of argument" not for the sake of argument, but as a measure of respect for human beings.[3]

10. Indeed, the rule of law is not equivalent to rule by law. While the history of its emergence is part and parcel of the process of consolidating State authority, the rule

[2] To use the list of formal characteristics of laws in Lon Fuller, *The Morality of Law*, revised ed. (New Haven, Connecticut, Yale University Press, 1969).

[3] Jeremy Waldron, "The concept and the rule of law", *Georgia Law Review*, vol. 43, No. 1 (2008), p. 56.

of law does not designate simply a behaviour-eliciting model of social control, but rather a valuable mode of governance that guides actions. The provisions at the heart of the concept of the rule of law are intended to express this difference. Accordingly, the requirements of generality, publicity, clarity, systematicity or integrity of laws, and their orientation to the public good, are expressions of the conditions under which authority can be exercised in ways that engage, rather than bypass, the rational capacity for agency.

11. Three ideas, then, are a core part of the classical notion of the rule of law: the regulation of power, equality before the law and the significance of judicial processes. While it holds true that there is a coercive dimension to the law, most prominent in criminal procedures, even (or, perhaps, in particular) there the capacity of law to engage the rational agency of parties is crucial to any understanding of the rule of law.[4]

12. While the academic debate among defenders of formalist and substantive conceptions of the rule of law has greatly waned, although perhaps not concluded, the United Nations system, throughout all its organs, has clearly opted for a rich understanding of the notion that refers to human rights, including a wide catalogue of political rights and, among them, democratic rights, the promotion of development and good governance. In the World Summit Outcome, Heads of State and Government recommitted themselves to actively protecting and promoting all human rights, the rule of law and democracy and recognized that they were interlinked and mutually reinforcing and that they belonged to the universal and indivisible core values and principles of the United Nations (General Assembly resolution 60/1, para. 119). In its resolution 57/221, on strengthening of the rule of law, the Assembly made a direct link between governance, rule of law, human rights and development (para. 7). Most recently, the Assembly adopted two resolutions, 65/32 and 66/102, in which it underlined the importance of implementing the rule of law at both the national and international levels, and called upon the United Nations system to mainstream the participation of women in rule of law activities.

13. In its resolution 19/36, on human rights, democracy and the rule of law, the Human Rights Council reaffirmed a robust understanding of the rule of law, not only asserting the interdependence of the terms in the definition, but also stressing, among other things, the relevance of the rule of law to peace, development and social cohesion (premised on gender equality and the elimination of all forms of discrimination).

IV. Transitional justice and the rule of law

A. Claims of relevance

14. That transitional justice can contribute to strengthening the rule of law has become commonplace in the literature and the practice (both local and international) of transitional justice. The Special Rapporteur is interested in understanding that contribution by highlighting some relevant examples and working towards

[4] See also Jürgen Habermas, *Between Facts and Norms* (Cambridge, Massachusetts, MIT Press, 1996), p. 448.

enhancing its potential in various contexts, as expressed in the implementation strategy for the mandate (see A/HRC/21/46, paras. 47-59).

15. To illustrate the prevalence of the view that transitional justice can contribute to the rule of law, virtually all truth commissions to date (such as those in El Salvador, Liberia, Morocco, Peru and South Africa) have used the concept of the rule of law both in an explanatory role (lack of respect for the principles of the rule of law is a factor leading to the rights violations under scrutiny) and as an object of their work (their recommendations are intended to strengthen the rule of law). Scholars largely agree on both the centrality of the concept and the usefulness of transitional justice measures in efforts to re-establish the rule of law. The Special Rapporteur outlines herein some of the contributions of transitional justice to the rule of law.

16. The United Nations system as a whole has adopted the view that transitional justice can contribute to strengthening the rule of law and has therefore made it an important element of its rule of law efforts, as shown by the significant number of resolutions adopted by the Security Council, the General Assembly and the Human Rights Council in which they consider both thematic issues and country situations, and the considerable number of related reports by the Secretary-General and the United Nations High Commissioner for Human Rights.

17. It is noteworthy that the most prevalent definition of the rule of law within the United Nations system was laid down, precisely, in a report of the Secretary-General to the Security Council on the rule of law and transitional justice (S/2004/616, para. 6). The rule of law is conceived as:

> "A principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency."

18. Transitional justice consistently figured as a core element of the framework for strengthening the rule of law proposed by the Secretary-General in guidance notes in 2008 and 2010. This remains unchanged in his most recent report to the General Assembly on this topic (A/66/133), in which he refers to transitional justice processes and mechanisms (in addition to constitution-making, law reform, electoral assistance and guarantees, capacity-building of justice and security institutions and engagement with civil society) as the essential elements of the Organization's framework for engagement in the rule of law sector.

19. Beginning with resolution 1040 (1996), in respect of the situation in Burundi, and in numerous resolutions since then concerning countries undergoing transitional processes, the Security Council has called for the restoration and maintenance of the rule of law and established peacekeeping mandates with rule of law components that include the implementation of transitional justice measures, in, among others, Afghanistan (resolutions 1401 (2002) and 2041 (2012)), Côte d'Ivoire (resolutions 1528 (2004) and 2062 (2012)), the Democratic Republic of the Congo (resolutions

1291 (2000) and 2053 (2012)), Guatemala (resolution 1094 (1997)), Iraq (resolutions 1500 (2003) and 2061 (2012)) and Liberia (resolutions 1509 (2003) and 2008 (2011)).

20. Specific attention was paid to the issue of women, peace and security by the Security Council in its resolutions 1325 (2000), 1820 (2008), 1888 (2009), 1889 (2009) and 1960 (2010), in which it called for increased representation of women at all decision-making levels and the establishment of gender-sensitive mechanisms for the prevention, management and resolution of conflict, including in justice and security reform processes. Likewise, the Council established monitoring and reporting procedures on grave child rights violations in resolutions 1612 (2005), 1882 (2009) and 1998 (2011).

21. In its resolution 18/7, by which it established the mandate of the Special Rapporteur, the Human Rights Council included the promotion of the rule of law as one of the aims of the implementation of a comprehensive approach to transitional justice. In the twelfth preambular paragraph of that resolution, the Council emphasized the importance of:

> "A comprehensive approach incorporating the full range of judicial and non-judicial measures, including, among others, individual prosecutions, reparations, truth-seeking, institutional reform, vetting of public employees and officials, or an appropriately conceived combination thereof, in order to, inter alia, ensure accountability, serve justice, provide remedies to victims, promote healing and reconciliation, establish independent oversight of the security system and restore confidence in the institutions of the State and promote the rule of law in accordance with international human rights law."

22. In its resolution 19/36, on human rights, democracy and the rule of law, the Council again emphasized the relevance of transitional justice to the strengthening of the rule of law. In paragraph 9 of that resolution, the Council stressed the need for the international community to assist and support countries that were emerging from conflict or undergoing democratization, as they might face special challenges in addressing legacies of human rights violations during their transition and in moving towards democratic governance and the rule of law. It also drew a specific link between democracy, the rule of law and the eradication of impunity, mentioning specifically the principles of the supremacy of law and of equal protection.

B. Contributions of transitional justice to the rule of law

23. The conviction that transitional justice can contribute to the rule of law is deeply entrenched, as demonstrated in the aforementioned texts. It is useful to analyse the specific forms that those contributions have taken. What follows is not an exhaustive categorization of the ways in which those contributions can take place, or of relevant cases, but is intended to illustrate (and begin to classify) them. This initial presentation is organized in terms of the distinctive contribution that each of the pillars of the mandate can make to strengthening the rule of law and, within those, the points are organized in an approximate ascending order of generality. As can be seen from the present report, these distinctions are largely analytical and therefore must be considered in conjunction, given that the four measures under the mandate share some common fundamental goals and are mutually supportive and their effects overlapping.

I. Truth-seeking mechanisms[5]

Exposing and removing compromised personnel

24. The most immediate and specific contribution that transitional justice measures can make to strengthening the rule of law is to expose and to help to remove public officials involved in violations of rights (those who violate the most basic tenet of the rule of law: the idea that power is constrained by means of laws).

25. Various truth commissions have attributed responsibility (which is not the same as criminal culpability) for human rights violations, either by omission or commission, to officials in various branches of government and at various levels of seniority, and have established the grounds for their resignation or removal. For example, the Commission on the Truth for El Salvador highlighted what it termed the "appalling submissiveness" of the judiciary (S/25500, annex, p. 172) and recommended the resignation of the Supreme Court justices.

Providing an analysis of security and justice sector failures and making recommendations for their reform

26. Many truth commissions have paid significant attention to the shortcomings of the judicial, security and other official sectors responsible, by action or omission, for failures of the rule of law, which, according to their own analyses, resulted in serious human rights violations. The independence of the successful truth commissions to date has made these accounts much more credible than those produced by private or political parties, and the particular circumstances under which truth commissions are typically formed — moments in which societies are endeavouring to reformulate their social contracts — provide an unparalleled platform for highlighting the relevance of principles, not only in the overall constitution but also in the daily practice of security and justice institutions.

27. In addition to pointing out the presence of compromised personnel, truth commissions have also highlighted dysfunctionalities of security and justice institutions and have made recommendations for their reform. Some of those dysfunctionalities are structural. A case in point is the report of the Guatemalan Historical Clarification Commission, which contains not only a thorough historical overview of State institutions, including the judiciary and the security services, but also far-reaching proposals for their reform. The Commission mentions the absence of adequate budgets for the judiciary, the excessive bureaucratization, the insufficient number of judges, the lack of defence lawyers, the deficient training of its members and the numerical deficiency of courts as some factors that impeded the efficient operation of the judicial system.[6]

[5] Truth-seeking may be entrusted to various bodies or members of society. The Special Rapporteur concentrates herein on truth commissions as the primary vehicle for truth-seeking and truth-telling in times of transition.

[6] See Comisión de Esclarecimiento Histórico, *Guatemala: memoria del silencio*, vol. 3 (Guatemala City, F & G Editores, 1999), p. 114. Available from http://shr.aaas.org/guatemala/ceh/mds/spanish/toc.html.

Promoting access to justice

28. Several truth commissions have recommended increasing the efficiency of the justice system and the accessibility of courts. The Timorese Truth, Reception and Reconciliation Commission highlighted that a fair, professional, accessible and effective judicial system was a cornerstone of establishing the rule of law,[7] while similar recommendations were made by the Truth and Reconciliation Commission of Liberia.[8] In Guatemala, the Commission pointed out that the geographical distance of courts from those in the countryside, linguistic barriers and cultural differences compounded other deficiencies of the judiciary.[9]

Promoting reforms to increase the independence of the judiciary[10]

29. Truth commissions have also made recommendations concerning the independence of the judiciary, suggesting that it can be strengthened by building firewalls between the judiciary and other State powers. This can be accomplished, in part, by giving the judicial system more administrative and budgetary autonomy and by reducing the likelihood that appointments to high judgeships are the result of partisan politics. It is equally important to increase the individual independence of judges, especially lower-court judges, who may remain beholden to their superiors within the judiciary. Such independence can be promoted through the establishment of a tenured judicial career in which the appointment, promotion and dismissal of individual judges does not depend on following the perceived preferences of superior-court justices. This would be aided by, among other measures, changes in the evaluation processes of judges. Recommendations of this sort were made by the truth commissions in Chile, El Salvador and Guatemala.[11]

30. The concern with judicial independence is not peculiar to Latin American truth commissions. The Truth and Reconciliation Commission of Sierra Leone unequivocally highlighted that the starting point in establishing the rule of law was the creation of an independent, impartial and autonomous judiciary.[12] In the case of the Timorese Truth, Reception and Reconciliation Commission, it argued that an independent, functioning judicial system was essential to securing the rule of law, that the independence of the judiciary from Government policy had been compromised and that the judicial system had failed to protect the basic human rights of those accused through due process.[7]

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[7] *Chega! Final Report of the Commission for Reception, Truth and Reconciliation in East Timor*, part 11, p. 16. Available from http://etan.org/news/2006/cavr.htm.

[8] See vol. 2, p. 384, of the final consolidated report. Available from http://trcofliberia.org/reports/final-report.

[9] Comisión de Esclarecimiento Histórico, *Guatemala*, vol. 3, p. 116.

[10] On guarantees of judicial independence, see also the report of the Special Rapporteur on the independence of judges and lawyers (A/HRC/11/41), paras. 14-84.

[11] See, for example, Comisión de Esclarecimiento Histórico, *Guatemala*, vol. 3, pp. 113-114 and *123-124, and vol. 2, chap. 4, of the report of the Chilean* National Commission on Truth and Reconciliation, "Behavior of the courts toward the grave human rights violations that occurred between September 11, 1973 and March 11, 1990" (Notre Dame, Indiana, University of Notre Dame Press, 1993), pp. 860-862.

[12] See vol. 2, p. 141, of the Commission's final report. Available from www.sierra-leone.org/TRCDocuments.html.

Laying the groundwork for the implementation of other rule of law measures

31. Many countries in which transitional justice measures are implemented, and not just low-income developing countries, suffer from resource or capacity constraints and from various forms of institutional weaknesses. These deficits, whether or not income-related, put a premium on the effective utilization of the judicial and non-judicial resources inevitably consumed by the implementation of rule of law reform measures. In any case, all transitional justice measures involve making difficult choices, including where to focus judicial investigations and how to select cases for prosecutions; which institutions to vet, at what levels and for what type of abuses; and which violations should trigger reparations benefits and at what levels to compensate victims. Having a comprehensive view of the context in which violations took place, the strengths and weaknesses of the institutions that caused or permitted those violations and the demographic and social profile of the victims, including their needs and preferences, allows for the development of more targeted and efficient responses. The work of truth commissions often provides a basis for attaining such a comprehensive view. This is an example of the possible interrelationship between the various transitional justice measures, on which further information is provided in section V.

Making victims visible, and enabling their participation

32. Systematic violence and rights violations are often accompanied by, and, in any case, leave in their wake, pernicious forms of marginalization. This is especially true when violence and violations target particular groups defined on the basis of gender, ethnic, national, religious or even geographical or class factors.[13] Under such circumstances, victims tend to disappear from public awareness and discourse, and the violations and conflict are often discussed as if they affected primarily infrastructure and the economic interests of elites. Truth commissions (especially since the trend emerged for them to make use of public hearings) have often provided a formidable instrument to air the stories of victims, to clarify some patterns of their victimization and to highlight the interrelated forms of marginalization to which they are frequently subjected. In short, truth commissions help to give voice to victims, both individually and as groups. The possibility of exercising voice, especially in public debates, is not irrelevant to the strengthening of the rule of law, as the Special Rapporteur will explicitly argue in section V. This contribution is particularly relevant for women, children, ethnic minorities and indigenous peoples, who are often either the special targets of violence or experience it distinctly. The Special Rapporteur will endeavour to strengthen trends in transitional justice that increase the potential to respond to various forms of marginalization.

Catalysing debates about the proper understanding of the rule of law

33. Truth-telling and the discussions that it generates may make an important contribution to the establishment of the rule of law precisely by querying the understanding of what the ideal of the rule of law itself requires from those who operate the judicial system. Both in Chile and South Africa, for example, attempts to

[13] The Special Rapporteur will mainstream concerns about gender and minorities throughout the present report, in the conviction that the topic is of relevance for each measure under consideration.

understand how otherwise honest judges could have failed so manifestly in their fundamental task of distributing justice led the truth commissions in both countries to criticize the then prevailing understanding of the rule of law among judges. This was an understanding that emphasized the formal aspect of the rule of law, an understanding that in reality conveniently unburdened judges from exercising their judgement about the legitimacy of their own roles within legal systems of dubious to no legitimacy. The division of labour between politicians and judges that this understanding established allowed judges to think of themselves as mere enforcers of laws for which they themselves bore no responsibility. While this holds true in a sense (both Chile and South Africa maintained a separation of power of sorts), it is never the case that judges have absolutely no discretion in either the application or the interpretation of the law that binds them.

34. The Chilean National Commission on Truth and Reconciliation blamed judges for conceding too much latitude to administrative officials by consistently interpreting laws in the way that was most favourable to them (for example, invoking the principle of the separation of powers in order not to examine the reasons adduced by the executive to imprison or even exile people under state-of-siege provisions), which contrasts with the "excessive rigor with which the courts adhered ... to formal legality in assessing the proof brought against [other] perpetrators", a formalistic zeal that, according to the Commission, sometimes "prevented [the courts] from applying the appropriate sanctions".[14]

35. The South African Truth and Reconciliation Commission shares the assessment of its Chilean counterpart of the role that a purely formalist understanding of the rule of law played in sustaining an oppressive regime: "The appearance of judicial independence and adherence to legalism under the guise of 'rule by law' serves as a powerful legitimating mechanism for the exercise of governmental authority".[15] It also insists, however, that:

> "There needs to be substance to the notion of judicial independence, otherwise the courts will be seen as the mere obedient servants of the other branches of government. It is precisely this 'space', available to the judiciary and to lawyers, which can be legitimately and legally used to preserve basic equity and decency in a legal system."[16]

36. Before examining the contribution that other transitional justice measures can make to strengthening the rule of law, the Special Rapporteur reiterates that the realization of the potential contributions attributed to the aforementioned truth-seeking mechanisms depends on the implementation of other transitional justice measures.

2. Vetting and other measures of institutional reform that aim at guaranteeing non-recurrence

37. Notwithstanding the contributions that truth commissions have made to understanding the failures of security and justice systems that led either directly or indirectly to massive human rights violations, and the wisdom of some of their

[14] See vol. 1, p. 120, of the Commission's final report.

[15] Truth and Reconciliation Commission of South Africa, *Truth and Reconciliation Commission of South Africa Report*, vol. 4 (London, Macmillan Reference Limited, 1998), p. 105.

[16] Ibid., p. 100.

recommendations, the fact remains that insight is not the same as transformation. Both analysis and specific action are required. Truth commissions, as temporary bodies with limited attributions and powers, are not responsible for the implementation of their recommendations. The Special Rapporteur, consistent with the resolution that created his mandate, which calls for a comprehensive approach to truth, justice, reparations and guarantees of non-recurrence, emphasizes that truth-seeking measures alone, however important they may be, do not exhaust the rule of law agenda in times of transition.

38. The idea of ridding institutions of abusers and collaborators in the aftermath of conflict or authoritarianism has a long (albeit not particularly distinguished) history.[17] Massive purges after periods of conflict are familiar all over the world, but that model should not be followed if one of the aims is to strengthen the rule of law. Vetting involves formal processes to screen the behaviour of individuals and assess their integrity on the basis of objective criteria, so as to determine their suitability for continued or prospective public employment.[18]

39. To sketch some of the crucial design variables in vetting programmes,[19] variables with regard to which different countries have adopted different positions, the Special Rapporteur notes:

(a) Vetting programmes have differed in terms of their targets. Choices must be made both about the institutions where vetting will be applied and the positions within those institutions that will be subject to screening;[20]

(b) Programmes differ also in terms of the screening criteria. It must be asked what kind of abuses, precisely, the system is designed to root out;[21]

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[17] See, for example, the papers in part II of Jon Elster, ed., *Retribution and Reparation in the Transition to Democracy* (Cambridge, United Kingdom of Great Britain and Northern Ireland, Cambridge University Press, 2006).

[18] According to the Secretary-General in his report on the rule of law and transitional justice in conflict and post-conflict societies, vetting usually entails a formal process for the identification and removal of individuals responsible for abuses, especially from police, prison services, the army and the judiciary (S/2004/616, para. 52). See also the Office of the United Nations High Commissioner for Human Rights publication on vetting programmes, available from www.ohchr.org/Documents/Publications/RuleoflawVettingen.pdf.

[19] See Alexander Mayer-Rieckh and Pablo de Greiff, eds., *Justice as Prevention: Vetting Public Employees in Transitional Societies* (New York, Social Science Research Council, 2007).

[20] More countries have established vetting programmes for sectors of the armed and police forces than for the judiciary. Germany and Greece have also vetted universities. Proposals to vet sectors of the news media and other professions were not uncommon in the aftermath of the transitions in Eastern and Central Europe. Of course, many countries, including those mentioned here, have used vetting processes for some electoral and other Government offices.

[21] The range here is also broad: in Eastern and Central Europe, the effort was to identify collaboration with former secret services (interpreted differently in the various countries). Other countries have sought to identify participation in violations of human rights. In Poland, the vetting law in fact does not seek to impose a penalty for past collaboration with the former secret services but rather for lying about it. See, for example, Roman David, *Lustration and Transitional Justice* (Philadelphia, Pennsylvania, University of Pennsylvania Press, 2011).

(c) Programmes also make different decisions about the types of evidence admissible in the process and, importantly, about the criteria for making determinations;[22]

(d) Not all programmes are the same in terms of the sanctions that they impose; even dismissals can take place in many ways (beginning with a relatively mild sanction involving affording someone the opportunity to resign without disclosing his or her participation in behaviour considered abusive). Vetting sanctions can involve different degrees of publicity and prospective limitations in seeking employment in various sectors in the future;

(e) Lastly, but importantly from a rule of law perspective, programmes differ in their establishment of review or appeals mechanisms.

40. Of all transitional justice measures, vetting has lent itself most to political manipulation. This can be explained by various factors. Vetting usually involves many cases; vetting bodies operate less publicly than truth commissions and, as administrative bodies, less publicly than court procedures; and vetting also determines access to State power and resources. Accordingly, it is particularly important to design and implement vetting programmes scrupulously, heeding exacting procedural standards, in consultation with civil society, and with as much transparency as possible, while ensuring the confidentiality to which both those who are screened and potential victims are entitled.

41. Vetting programmes that satisfy these requirements can make important contributions to the rule of law in the aftermath of gross violations of international human rights law and serious violations of international humanitarian law. These are fundamentally of three related kinds:

(a) Removing compromised personnel from the security and justice sectors spares victims and others from having to deal with those who abused them when they seek State services to which they are entitled;

(b) Removing compromised personnel may dismantle networks of criminal activity that, among other things, may hamper reform processes;

(c) Beyond the brute fact of repeopling institutions, as important as this might be, vetting measures can contribute to the rule of law through their signalling function: they announce the willingness of institutions and their leaders to commit themselves to fundamental rights norms in whatever decisions they make concerning appointments, promotions and dismissals.

42. The importance of staffing changes in crucial rule of law institutions notwithstanding, such changes will not be sufficient to guarantee that violations will not recur unless they are accompanied by deeper structural reforms. Vetting should properly be considered to be one part of those broader reforms. On the side of the judiciary, they relate to the adoption of some of the abovementioned measures. They include increases in the budgets of the justice sector, the location of courts, the availability of legal aid and of either interpretation services or the inclusion of other languages for the operation of courts; changes in the processes of appointing and promoting judges, prosecutors and judicial officers; the assignment of court cases according to objective criteria, and the rationalization of systems of court

[22] As administrative procedures, vetting programmes work on the balance of probabilities rather than proof beyond any reasonable doubt.

administration; the strengthening of due process guarantees, witness protection programmes, limits on pretrial detention; improvements in evidence-gathering measures and limiting reliance on confessions; modernization of codes, including the typification of various forms of human rights abuses as crimes under national legislation; and the explicit incorporation of international human rights and humanitarian law obligations into domestic legislation. On the side of the security forces, broader reforms include disbanding groups heavily involved in illegal or irregular behaviour; rationalizing forces (a frequent problem in both authoritarian and post-conflict countries where typically there is a proliferation of security bodies with both inconsistent and/or overlapping mandates); strengthening civilian oversight mechanisms; improving the gender and ethnic representativeness of the forces, especially in positions of authority (a staffing issue that goes beyond considerations normally in the domain of vetting programmes); increasing the transparency of security-related budgets; and differentiating between military and policing functions.

3. Reparations

43. Reparations have come to occupy a special place in transitional processes, at least in part because they are the transitional justice measure that arguably has the greatest potential to make an immediate difference to the life of victims. Most recent transitional countries have adopted administrative, non-judicial programmes to distribute a variety of benefits (material and symbolic, and individual and collective) to victims as parts of their transitional justice policies.[23]

44. Here again, there are significant variations by country, including:[24]

(a) Programmes differ in their degree of comprehensiveness, that is, in the violations that trigger access to benefits. Most programmes have concentrated on a fairly narrow set of violations of largely civil and political rights, such as extrajudicial executions, disappearance, illegal detention, torture and, increasingly, forms of sexual violence;

(b) Programmes differ in their degree of complexity, that is, in the kinds of benefits that they distribute. The trend is towards programmes of greater complexity, which provide monetary compensation and other kinds of benefits such as access to medical services and educational and housing support, in addition to symbolic benefits such as official apologies and the renaming of buildings and public spaces;

(c) Different programmes adopt different distribution modalities for their compensatory benefits, and some involve the apportioning of those benefits among family members. All other things being equal, experience suggests that distributing monetary benefits in terms of a pension system rather than in single lump sums is beneficial. There is some evidence that apportionment has beneficial consequences for women and children;[25]

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[23] See, for example, Pablo de Greiff, ed., *The Handbook of Reparations* (New York, Oxford University Press, 2006).

[24] Ibid., and *Rule-of-Law Tools for Post-Conflict States: Reparations Programmes* (United Nations publication, Sales No. E.08.XIV.3). Available from www.ohchr.org/Documents/Publications/ReparationsProgrammes.pdf.

[25] See, for example, Ruth Rubio-Marín, ed. *The Gender of Reparations* (New York, Cambridge University Press, 2009).

(d) Programmes also vary significantly in their degree of munificence, that is, in the magnitude and the quantum of benefits that they offer.

45. Reparations programmes can contribute to strengthening the rule of law in the following ways:

(a) Reparations constitute a form of recognizing the rights of victims and the corresponding State obligations. In 1928, the Permanent Court of International Justice, in the *Factory at Chorzów* case, argued that it was a principle of international law that the breach of an engagement involved an obligation to make reparation in an adequate form.[26] Article 2 (3) of the International Covenant on Civil and Political Rights also establishes the duty to provide effective remedy for violations of the rights under the Covenant. Providing reparations to victims therefore constitutes the satisfaction of one of their rights and a way of satisfying a series of State obligations, including to provide effective remedies and to ensure fair and equal treatment under the law;

(b) Reparations are not merely a manifestation of particular rights but can enable the exercise of other rights. The restitution of citizenship and other rights, including a particular legal status, can remove severe constraints on the exercise of rights and opportunities. Having an unjustified criminal record expunged, for example, can have profound effects on the future opportunities of individuals. Similarly, material reparations can make the difference between being able to resume education and training or being condemned to a life of deprivation. The point is not simply about lives of different quality (as important as this is for individuals and in the aggregate) but about the prospects of victims exercising rights in general in a way that gives meaning to notions of equality under the law;

(c) When there is a collective or group dimension to the violations or of conflict, as is usually the case with gross violations of human rights and serious violations of international humanitarian law, some forms of which affect gender, ethnic, religious, or other groups in particular, massive reparations programmes can have an inclusive redress effect that strengthens the notion of the generality of law and the protections that it affords.

4. Justice

46. Considering their particularly rich history, the Special Rapporteur highlights below some recent relevant experiences that illustrate the contributions that prosecutions can make to strengthening the rule of law.

47. Contexts in which gross violations of human rights and serious violations of international humanitarian law have occurred pose particular challenges for prosecutions, both in theory and in practice. Indeed, for various reasons, including the number of perpetrators and scarcity of resources, capacity and will, in addition to the fact that in many transitions the balance of power between the predecessor regime and the successor regime makes prosecutions a threat to the transition, in most cases only a fraction of those who bear responsibility for perpetrating outrageous acts are ever even investigated.

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[26] *Case concerning the Factory at Chorzów (Germany v. Poland)*, Indemnity, 1928, PCIJ, Series A, No. 17, p. 47.

48. While prosecutions in domestic courts remain in principle favoured over international courts considering their lower costs and higher local impact, participation and ownership, precisely owing to reasons relating to the fragility of institutions in many post-conflict and post-authoritarian settings, alternatives to domestic prosecutions have been pursued with some success.

49. The two ad hoc international tribunals established by the Security Council to try cases stemming from the conflicts in the former Yugoslavia and Rwanda, in 1993 and 1994 respectively, are winding down their operations. The former has indicted 161 persons and concluded 126 proceedings, leading to 64 convictions, 13 acquittals, 13 transfers to national jurisdictions and 36 withdrawals of indictments.[27] The latter has indicted 92 persons and completed 74 cases, with 64 convictions and 10 acquittals. It has transferred four cases to national jurisdictions and has withdrawn two indictments.[28]

50. The International Criminal Court issued its first conviction, against Thomas Lubanga of the Democratic Republic of the Congo, on 10 July 2012 and issued its first reparation decision, in the same case, on 10 August.

51. Hybrid tribunals, thought to combine some advantages of domestic prosecutions (such as proximity, legacy and possibility of participation) and to mitigate some disadvantages of international tribunals (such as distance and costs)[29] are also producing results, with the Special Court for Sierra Leone having convicted the former President of Liberia, Charles Taylor, on 26 April 2012. The case is now under appeal. The Supreme Court Chamber of the Extraordinary Chambers in the Courts of Cambodia upheld the conviction by the Trial Chamber of Kaing Guek Eav (alias "Duch") on 3 February 2012.

52. Courts in Bosnia and Herzegovina continue to conduct proceedings in cases of war crimes and crimes against humanity stemming from the 1992-1995 conflict. Criminal reports have been filed with various police agencies against 5,895 suspects. A total of 1,285 investigations are currently under way, while the trials of 412 perpetrators have been completed.[30] The country's complex judicial structure and intermittent political pressures notwithstanding, there are hopes for the implementation of the National Strategy for War Crimes Processing adopted in December 2008. The Strategy, the implementation of which is spearheaded by the State-level Court of Bosnia and Herzegovina — a hybrid institution with international judges and prosecutors serving alongside their counterparts from Bosnia and Herzegovina — envisages the completion of all cases within 15 years of its adoption.

53. Given the topic of the present report, much more important are domestic prosecutions, which receive less attention internationally, even though two countries, in particular, have made significant strides on this front. As at August 2012, 1,932 individuals had been named in criminal proceedings for crimes against humanity in Argentina, of whom 1,597 had been or were currently under investigation (319 had

[27] See www.icty.org/sections/TheCases/KeyFigures.

[28] See www.unictr.org/Cases/StatusofCases/tabid/204/Default.aspx.

[29] See *Rule-of-Law Tools for Post-Conflict States: Maximizing the Legacy of Hybrid Courts* (United Nations publication, Sales No. E.08.XIV.2). Available from www.ohchr.org/Documents/Publications/HybridCourts.pdf.

[30] Organization for Security and Cooperation in Europe Mission to Bosnia and Herzegovina trial monitoring programme, war crimes proceedings statistics, 31 May 2012.

died and 16 been declared incompetent). Of the total, 272 have been convicted and 20 acquitted. In 76 per cent of the convictions, the courts have handed down prison terms of 16 years or more, with a large number of life sentences imposed.

54. Beyond numbers, there are at least two facts to emphasize about these efforts: first, the cases involve not only members of the military and the police, but also civilians, including civilian members of the intelligence services of the armed forces, and, importantly, members of the judiciary and officials of the de facto Government. At least 27 former judges, prosecutors and defence attorneys have been charged with complicity or participation in human rights violations.

55. Second, great progress has been made in opening investigations into gender and sexual crimes, in some cases against high officers, leaving aside that these crimes open liability only to those that commit them directly.[31]

56. Chile, similarly, has impressive numbers to show. Since 2000, 771 officials have been tried and convicted in cases relating to disappearances and executions. A further 31 died before their cases had been finalized. An additional 1,446 cases are continuing. This means that a staggering 76 per cent of victims of disappearances and executions either have or have had a prosecution initiated on their behalf.[32] While it is true that it has taken decades in both countries to reach this stage and that there are abiding problems with delays and the actual serving of sentences, among other difficulties, these are certainly experiences that merit further analysis.

57. The case for the contribution made to the rule of law by criminal justice for gross violations of human rights and serious violations of international humanitarian law hardly requires elaboration. Nevertheless, it must be stated that, first, criminal prosecutions in cases of this sort give life to the principle of the sovereignty of law and of the related principle of equality. No one, regardless of rank or status, is above the law. Second, at a more practical level, given the complexities of criminal trials for systematic abuses, these processes help to develop transferable skills that contribute to strengthening the overall capacity of judicial systems.

V. Aggregate effect on the rule of law of a comprehensive transitional justice policy

58. For clarity, the Special Rapporteur has presented the potential contributions of each of the four elements of his mandate separately, while stressing that the distinctions are purely analytical and pointing out that there are functional overlaps between the measures (for example, the reminder that, although truth commissions can make recommendations on a broad range of issues, those recommendations involve the implementation of the other measures that are usually considered part of a holistic transitional justice policy).

59. In creating the mandate of the Special Rapporteur, the Human Rights Council emphasized the importance of a comprehensive approach to the four elements. The Special Rapporteur, in his first report to the Council and elsewhere, has articulated a position on the links between the four elements. He does not summarize those

[31] See www.cels.org.ar/wpblogs/estadisticas and Centro de Estudios Legales y Sociales, *Derechos humanos en Argentina: informe 2012* (Buenos Aires, Siglo Veintiuno Editores, 2012).

[32] See www.icso.cl/observatorio-derechos-humanos.

arguments herein, but uses those that are particularly relevant to the discussion about the relationship between transitional justice and the rule of law. The argument explains and systematizes the effects attributed to the measures in section IV.

60. The four elements of the mandate (truth, justice, reparations and guarantees of non-recurrence) are not simply a random collection of efforts. They are related to one another, both conceptually and empirically, which is one of the reasons that the tendency of some Governments to trade off some against the others is both unacceptable and unlikely to succeed. The four measures can complement one another, helping to compensate for the deficits that each faces vis-à-vis the immensity of the task of redressing gross violations of human rights and serious violations of international humanitarian law.

61. Furthermore, at the conceptual level, they can be seen to be part of a whole by virtue of sharing some goals. These goals happen to be important for the promotion of the rule of law (which is indeed one of the final goals of transitional justice, on this conception) and to efforts to achieve justice by means of formal systems of law. The four measures can be seen as instruments for providing recognition to victims: all transitional justice measures are designed to provide recognition to victims, not only of their stories and the suffering that they have endured, but also, and crucially, of their status as bearers of rights. They can also be seen as means of promoting trust, both horizontally, between victims and others, and, importantly, vertically, between victims and State institutions.

62. Both recognition and trust are preconditions for and consequences of the effort to establish formal systems of justice. Legal systems perforce operate on the basis of creating legal subjects whose definitional basis is the possession of rights (and obligations). Similarly, no legal system can operate without a certain degree of trust: in the absence of total (or totalitarian) surveillance, criminal legal systems must rely upon citizens' willingness to report both crimes that they witness and crimes that they suffer. This presupposes minimal trust in police investigations, in the efficiency of the court systems, in the honesty and independence of judges and in the strictness (but perhaps also the simultaneous humaneness) of the prison system, among other things.

63. Legal systems, however, do not merely rest upon pre-existing levels of recognition and trust: they also catalyse them. The extension of some rights to legal subjects has historically unleashed familiar struggles for recognition leading to the extension of the same rights to others (in the name of equality, for example), and to the extension of the legally recognized catalogue of rights (in the name of democratic legitimacy, among other reasons). Similarly, legal systems, by accumulating a record of successfully mediating social conflicts, do not rest upon established expectations but create and stabilize expectations in new areas.

64. The potential of transitional justice to accomplish these goals depends on two social mechanisms that are fundamental to a robust understanding of the rule of law: first, the ability of the various measures to affirm certain basic norms, which happen to be the very same norms that are fundamental to the rule of law. Recognition consists of the acknowledgment of basic rights, and trust is not the same thing as predictability because, otherwise, systematically corrupt and authoritarian Governments would be paragons of trustworthiness. Rather, trust rests on the expectation of commitment to action on the basis of shared norms.

65. Second, transitional justice measures work, insofar as they do, by virtue of their potential to catalyse processes for the formation of some groups and the disbandment of others,, also on the basis of norms (articulation and disarticulation). That the measures have disbandment capacity is clear from the effects of vetting, prosecutions and truth commissions, to the extent that there are groups that can operate only with the advantage of being in the shadows. That the measures have formation capacity is evidenced by the creation of a plethora of civil society organizations wherever the measures are placed on the public agenda of countries undergoing transitions.

66. Norm affirmation and incentives to organize or reorganize civil society are two crucial social mechanisms through which a comprehensive approach to transitional justice contributes to the rule of law, as it is robustly understood. The measures rest upon but also strengthen regimes of rights where it is understood that individuals are rights-bearers and that they can organize themselves in order to raise claims against one another, and crucially, against the institutions of the State. In this way, transitional justice contributes to the overcoming of conditions under which persons are mere supplicants, dependent on the will or grace of the authorities. They become claimants of rights and participants in the processes by which the content, application and strength of the law are defined. Dealing with the crimes of the past, then, is instrumental for the rule of law.

67. No country can claim to respect the rule of law if the violation of its most fundamental norms remains inconsequential. This is why rule of law reforms cannot be wholly prospective and ignore the past. It is not that transitional justice measures are in essence past-oriented, but there is no such thing as an entirely new beginning. Wherever transitions take place, political space is shared by those whose fundamental rights were violated and those whose, by chance, were not. Wherever systematic rights violations have taken place, there are no such things as rights, strictly speaking, whether for former victims or for anyone else, showing that the topic is of concern not just for victims. Trusting the rule of law and giving force to fundamental rights, in all spheres, require ensuring proper redress for past violations, given that the confidence of victims and of others who might be victimized (i.e. everyone in a system in which systematic rights violations are hidden or ignored as a thing of the past) rests upon evidence that power is effectively regulated, that people are treated equally and that they have recourse when that is not the case. Institutions are created by human beings for whom history matters. Accordingly, the strength of the rule of law in the present and its prospects for the future lies in ensuring that the past is not ignored.

VI. Need for transitional justice measures compliant with the rule of law

68. To contribute to the strengthening of the rule of law, the design, establishment and functioning of all transitional measures should comply with all its requirements, including all procedural guarantees of fairness.

69. To illustrate some salient challenges, taking the measures in an order that reverses that in which they have been presented herein, prosecutions in times of transition have had to confront questions about the retroactive application of law, which violates the principle of *nullum crimen sine lege, nulla poena sine lege*

(which prohibits a criminal conviction when there is no prior law criminalizing the act). Country experience suggests that this can be addressed by appealing to international commitments that countries may have made, by appeal to peremptory norms (*jus cogens*) or to substantive and procedural laws endorsed by the predecessor regime, by requesting the independent and impartial courts of the successor regimes to pronounce themselves on the repeal of such laws by the abusive regimes or on the status of amnesties that they may have given themselves, or by finding loopholes in laws passed by predecessor regimes to authorize the violations, among others. The main point, however, is that, if criminal prosecutions and trials are to strengthen the rule of law, they cannot ignore questions of legality, and that their contribution to this end depends on the meticulous adherence to the requirements of due process, showing that everyone, even those suspected of the worst violations, is treated fairly by courts. While the legal grounding and procedural aspects of individual trials are important, so too is the distribution of the prosecutorial efforts. The principle of equal treatment should also be observed in the way in which prosecutions are distributed, especially if the violations took place in contexts in which group-based motivations might have been an issue. It is not a matter of seeking to track exactly group-based distribution of the violations, but to ensure that even-handedness also rules the initial selection of cases for attention by judicial systems.

70. Reparations programmes must also abide by principles of even-handedness and procedural fairness in their treatment of both categories of cases and individual applications. The choice of categories of violations that trigger access to reparations needs to be mindful of the initial distribution of violations and of patterns of victimization (another reason why having the sort of comprehensive information about violations that truth commissions typically gather is also useful for purposes of reparations). Discriminatory selectivity in this choice, in the determination of types and levels of benefits for various violations and in the processing of individual reparations applications can undermine the contribution that reparations can make to the rule of law. While progress has been made in the way in which reparations programmes deal with female victims of violations and conflict, much remains to be done.[33]

71. Vetting programmes may fall foul of the requirements of the rule of law in various ways. For example, they may interfere with the principle of equal access to public service or disregard the presumption of innocence if they end up taking the form of a purge, indifferent to questions about individual responsibility. In the case of the judiciary, questions may arise about security of tenure and, therefore, about independence. Generally speaking, the programmes must be mindful of issues relating to standards of evidence and ensure that appropriate appeals mechanisms are established to contest the determinations of the vetting bodies.[34]

72. Truth commissions are not judicial institutions and should not assume their functions. Although commissions can attribute responsibility, they should not arrogate the authority to make determinations concerning criminal guilt. Even within these limits, procedural fairness and the right to privacy of both alleged

[33] See, for example, Rubio Marín, ed., *The Gender of Reparations*, and the report of the Special Rapporteur on violence against women, its causes and consequences (A/HRC/14/22).

[34] See Federico Andreu-Guzmán, "Due process and vetting", in Mayer-Rieckh and de Greiff, eds., *Justice as Prevention*.

perpetrators and even victims may be compromised. Insofar as possible, conferring a right of reply to every individual implicated before releasing the final report may safeguard the commission's work from accusations of partiality or disrespect for procedural fairness.[35]

73. While various countries have tackled many of these issues, the Special Rapporteur takes the opportunity to reiterate the importance of guaranteeing that transitional justice measures comply with rule of law requirements and stresses the need to systematize approaches to ensure that this is the case, a topic that he will take up in his future work.

VII. Conclusions and recommendations

74. **In the light of the continuing discussions about the rule of law by the General Assembly, the Special Rapporteur wishes to highlight the manifold contributions that transitional justice measures can make to strengthening the rule of law in countries that have implemented them and, on the basis of those experiences, to sound a cautionary note about the idea that gross violations of human rights and serious violations of international humanitarian law can be removed from the rule of law reform agenda.**

75. **All rule of law reform projects take place in societies with a specific history. Those in which the issue is of most concern are typically those in which gross violations of human rights and serious violations of international humanitarian law have taken place. Since there is no such thing as an entirely new beginning, the immediate effectiveness of rule of law reform and its future depend upon making rule of law institutions trustworthy. There is no case to be made about the trustworthiness of rule of law institutions that allow the violation of even the most fundamental rights to remain inconsequential.**

76. **Examples examined herein demonstrate that truth-seeking mechanisms may contribute to the rule of law by exposing and removing compromised personnel; providing an analysis of shortcomings of security, justice and other sectors, in addition to making proposals for their reform; laying the groundwork for the implementation of other rule of law measures; making victims visible and enabling the participation of marginalized groups and women; and catalysing debates about the proper understanding of the rule of law.**

77. **Vetting programmes may make an important contribution to the rule of law in the aftermath of gross violations of international human rights and humanitarian law in three fundamental and related ways: they can provide specific action and potential for transformation that complement the contribution of truth-seeking commissions; fulfil a signalling function; and express public commitment to fundamental rights in decision-making processes by removing compromised personnel and dismantling networks of criminal activity.**

[35] On some of these issues, see Mark Freeman, *Truth Commissions and Procedural Fairness* (Cambridge, United Kingdom, and New York, Cambridge University Press, 2006).

78. **Reparations programmes contribute to the rule of law by recognizing victims' rights and States' duties; providing empowerment to victims and enabling them to exercise other rights, including claiming access to various State-provided benefits and services; by creating a sense of inclusion, in particular where the violations had a collective or group dimension, including gender; and, when the programmes are designed and operated equitably, by strengthening the principle of equality before the law.**

79. **Prosecutions have contributed to strengthening the rule of law by ensuring that perpetrators do not go unpunished, thereby demonstrating to society that justice is done and advancing visibility and norm affirmation for gender-related and sexual crimes, among others. Experience of prosecutions in the context of transitional justice is likely to build and strengthen the capacity of domestic judicial systems. This is crucial to successfully maintaining and consolidating the achievements of transitional justice measures, which are limited in time and scope.**

80. **The Special Rapporteur, consistent with his mandate, which calls for the adoption of a comprehensive approach that links its four pillars (truth, justice, reparations and guarantees of non-recurrence), emphasizes that the full potential contribution of transitional justice to the rule of law is realized only by the adoption of an approach that implements systematically its four elements.**

81. **The Special Rapporteur therefore calls upon all relevant actors to resist the tendency to think of the four measures as ones among which trade-offs can be made, or of transitional justice as a special form of justice, in particular a soft form of justice.**

82. **The Special Rapporteur wishes to highlight that country experiences of these measures suggest that a purely formalist understanding of the rule of law has been insufficient to prevent violations and that the notion of the rule of law to which transitional justice bodies have sought to contribute is a robust one that links it with human rights, governance and development and that asserts its relevance for peace and social cohesion, including gender equality and the absence of discrimination on any grounds.**

83. **The Special Rapporteur, while emphasizing the contributions that transitional justice can make to the rule of law, also affirms the importance of designing and implementing transitional justice measures in ways that comply with the underlying principles of the rule of law.**

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Promotion and protection of human rights: human rights situations and reports of special rapporteurs and representatives

Situation of human rights in the Islamic Republic of Iran**

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report on the situation of human rights in the Islamic Republic of Iran submitted by the Special Rapporteur on the situation of human rights, Ahmed Shaheed, in accordance with Human Rights Council resolution 16/9. The Special Rapporteur presented his first interim report to the General Assembly during its sixty-sixth session, and submitted his first report to the Human Rights Council during its nineteenth session. The Human Rights Council extended the mandate of the Special Rapporteur during that session.

The present report does not cover all potential violations of human rights in the country, but provides an overview of the prevailing human rights situation, with a focus on systemic issues that pose obstacles to the ability of the Islamic Republic of Iran to comply with its international obligations.

* A/67/150.

** The present report was submitted after the deadline as a result of consultations with the Member State.

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Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran

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I. Introduction

1. In his report to the General Assembly at its sixty-sixth session,[1] the Special Rapporteur considered that the outcome of the Islamic Republic of Iran's universal periodic review of 2012 provided a sound platform for his dialogue with the Government of the Islamic Republic of Iran and the international community. Of the 123 recommendations accepted by the Government, roughly 35 per cent were related to concerns about civil and political rights; 29 per cent concerned social, economic and cultural rights; some 22 per cent concerned rights covered by the International Convention on the Elimination of All Forms of Racial Discrimination; and approximately 5 per cent were related to children's rights. The recommendations encouraged the Government to, inter alia, address legislative inconsistencies that undermine its international obligations; continue to advance several aspects of its socioeconomic achievements to extend their benefits to minorities; and consider the abolition of juvenile executions.

2. Since the conclusion of the universal periodic review of the Islamic Republic of Iran, a number of significant developments have transpired that affect the Government's ability to implement these recommendations. For example, the Majlis adopted cybercrimes and cybercafe laws, considered the Bill of Formal Attorneyship, and is currently considering a new Islamic Penal Code. A number of human rights defenders and non-governmental organizations, both inside and outside the country, have also raised serious concerns about the effects of sanctions on human rights. The ramifications of these developments on the Government's ability to meet its international obligations are a source of concern, and will be part of the Special Rapporteur's future work and dialogue with the Iranian Government and the international community.

3. The Special Rapporteur welcomes the commentary issued by the Iranian authorities on each paragraph of this report. These comments primarily address examples presented by the mandate holder, which are meant to support his conclusion that inconsistencies in the country's legal framework, capricious implementation of the rule of law, and tolerance for impunity lead to a reality in which the Government's practices are incongruous with its professed principles. The Government maintains that this conclusion is unfounded and supported by "baseless allegations", and that the sources of those allegations are invalid.

4. The Government in its comments also asserts that allegations about legal iniquities are "groundless" since the country's Constitution guarantees that all Iranian citizens are equal regardless of gender, religion, ethnicity or race. It also suggests that claims of due process violations are "fabrications" since the country's body of laws forbids mistreatment of detainees and the use of coerced confessions; establishes a legal process to remedy violations; and provides for access to legal counsel.

5. The Special Rapporteur believes that the Government's examples, as well as the fact that it is a party to five human rights instruments, further validate his observation that the country possesses the basic legislative framework and tools to promote respect for human rights. However, he also maintains that the existence of these legal provisions does not in itself invalidate allegations of human rights violations made by the 221 individuals interviewed for his reports between

[1] A/66/374.

November 2011 and July 2012. Moreover, he regrets that allegations of egregious human rights violations which have been taken up by the special procedures of the Human Rights Council remain unaddressed by the Government.[2] Failure to address human rights violations and breaches of the rule of law contributes to a culture of impunity, which effectively negates the protection offered by the country's legal framework. The Special Rapporteur further believes that the creation of an independent national human rights institution that complies with the Paris Principles would increase the confidence of the international community about the Government's commitment to observe its human rights obligations.

6. Lastly, the Government argues that the Special Rapporteur has ignored several articles of the Code of Conduct for Special Procedures Mandate Holders, especially article 4, which states that mandate holders must fully respect "national legislation and regulations of the country wherein they are exercising their mission". The Special Rapporteur contends that this phrase refers to the responsibility of mandate holders to respect national law while on mission in countries concerned, and does not preclude them from presenting constructive criticism about those national laws that undermine a country's international obligations. The Special Rapporteur hopes to secure the opportunity to engage with the Government on matters raised in his communiqués, and to discuss concerns raised by the international community during the remainder of the second year of his mandate. Similarly, the Special Rapporteur continues to look forward to an opportunity to visit the Islamic Republic of Iran, in line with his most recent request in May 2012.

II. Methodology

7. Since his report to the Human Rights Council at its nineteenth session,[3] the Special Rapporteur has issued two joint statements regarding alarming trends in the country's human rights situation, including the prosecution of human rights defenders and lawyers, and executions in the absence of fair trials. The Special Rapporteur has also addressed several communications regarding specific cases to the Government.

8. For the purposes of this report, the Special Rapporteur has reviewed a number of documents, including national legislation; documents produced by treaty body reviews, including national reports; international and national media reports; and reports from non-governmental organizations and human rights defenders. He also examined the Government's comments and observations on his report of March 2012 to the Human Rights Council, which were issued by the Islamic Republic of Iran during the Special Rapporteur's interactive dialogue with the Council.

9. Despite not being allowed to visit the country, the Special Rapporteur followed 124 cases between February and June 2012, in relation to which he conducted 99 interviews with individuals located inside and outside the country. Of those interviews, 75 can be attributed to first-hand accounts, and 24 were conducted with reliable sources or eyewitnesses of human rights violations. The Special Rapporteur

[2] The special procedures of the Human Rights Council have transmitted 21 communications from 1 January to 30 August 2012, but have received only one reply from the Government.

[3] A/HRC/19/66.

has launched a website in order to present his work and the Government's comments on his work.[4]

III. Civil and political rights

A. Freedom of expression and the right to information

10. In October 2011, in its report to the Human Rights Committee, in which it reviewed the Government's compliance with the International Covenant on Civil and Political Rights, the Government maintained that "an individual is free to speak, write and form association"[5] and that the Constitution describes the rights and legitimate freedoms of different sections of society, including publications and press freedom. To demonstrate this position, the Government presented the country's Press Law of 1986, which defines the mission of the media; provides for a media licensing scheme; describes the rights of the press in three articles, and defines 17 instances of impermissible content. Impermissible content is defined as, inter alia, that which causes damage to "the foundation of the Islamic Republic"; insults "Islam and its sanctities"; offends "the Leader of the Revolution and recognized religious authorities"; and creates "discord between and among social walks of life specifically by raising ethnic and racial issues".[6]

11. Furthermore, in its comments and observations on the Special Rapporteur's report to the Human Rights Council of March 2012, the Government maintained that article 24[7] of the Constitution is not in violation of article 19 of the Convention, since it "imposes [sic] certain limits to secure respect for rights and dignity of individuals, safeguards [sic] their security as well as maintenance of public order, health, and morality". It further asserted that "media offences are tried publicly and in the presence of a jury".

12. The Special Rapporteur remains concerned that some elements of the Press Law and more recent legal developments undermine the rights to freedom of expression and to information. Despite legal provisions for public press trials in "the presence of a jury", dozens of journalists have unanimously maintained that their trials were conducted behind closed doors, and that trial deliberations were always undertaken by judges and not juries.

13. The draft Islamic Penal Code treats blasphemy as a capital offence.[8] Article 263 states that any person that insults the Prophet of Islam or other Great Prophets shall be considered as *sabb al-nabi* and punished by death. The Special Rapporteur argues that acts of insult and defamation do not constitute "serious

[4] The website contains summaries of those interviews conducted for the Special Rapporteur's reports, as well as a catalogue of material related to the General Assembly, the Human Rights Council, treaty bodies and other special procedures as it relates to human rights in the Islamic Republic of Iran. The website is accessible at http://www.shaheedoniran.org/english/reported-cases/index.1.html.

[5] CCPR/C/IRN/3, para. 622.

[6] Ibid., para. 626.

[7] Article 24 states: "publications and the press have freedom of expression except where there is infringement of the basic tenets of Islam or public rights. In this respect detailed provisions will be laid down by law".

[8] The Islamic Penal Code, article 263 (January 2012).

crimes" for which the death penalty may be permissible, as stipulated by article 6 of the Convention. Despite attempts to refine the Code's blasphemy provisions, the law remains vague on what constitutes an "insult". This lack of precision gives way to arbitrary application of the law, allows for the prosecution of individuals who may not knowingly or intentionally commit crimes that constitute "blasphemy", and runs counter to the guarantees of international human rights instruments, which mandate that capital punishment be applied to "intentional crimes with lethal or other extremely grave consequences".[9]

14. The Computer Crimes Law primarily regulates Internet content and activities. It also compels Internet service providers to document and store the computer histories and personal details of their users. Similarly, the cybercafe law regulates the type of services Internet cafes may provide, the type of content they may allow their users to transfer via their equipment, and requires cafes to document and store the identities and user histories of their customers for "at least six months".[10]

15. The Special Rapporteur is also concerned about reports of Government activities that seemingly infringe on freedom of expression and the right to information. For example, reports indicate that the Center to Investigate Organized Crime[11] has targeted websites deemed to promote "terroristic, espionage, economic or social crimes". This includes websites that allegedly possess pornographic content, insult Islam or Government officials, proselytize unrecognized religions, or establish anti-government political groups.[12] One official website reportedly announced that authorities had identified and terminated 90 "anti-religion, anti-culture and anti-public chastity" websites.[13] It was also announced that documents and confessions were obtained from a number of those involved "who enjoyed the security support of foreign nations", for the purposes of "advancing the goals of the enemies [sic] in parts of the soft overthrow project".[14] These activities have reportedly resulted in arrests, detentions and even death sentences against individuals accused of developing and maintaining such websites, and Iranian citizens who speak out against the Government on the Internet. Moreover, the authorities recently banned domestic news outlets from reporting on the impact of economic sanctions imposed on the Islamic Republic of Iran.[15]

16. Several foreign news agencies have also reported that authorities have announced a ban on the use of foreign e-mail services such as Yahoo, Gmail, Hotmail and MSN in order to "protect information security" and that, in a letter to the Head of the Radio Communications and Regulations Organization, the Minister of Information and Communications Technology wrote that "these email services

[9] www2.ohchr.org/english/law/protection.htm.

[10] See http://old.isna.ir/ISNA/NewsView.aspx?ID=News-1923707 and www.cyberpolice.ir/page/3031.

[11] Justice for Iran, "Systematic Torture to Obtain Televised Confessions: Gerdab; a Dictated Scenario", 2012; see also http://radiozamaneh.com/english/content/rights-group-accuses-irgc-office?page=2; www.amnesty.org/en/news/iran-duty-inform-2012-05-02; and www.gerdab.ir/.

[12] www.gerdab.ir/fa/content/3.

[13] www.gerdab.ir/fa/pages/?cid=160.

[14] Justice for Iran, "Systematic Torture to Obtain Televised Confessions: Gerdab; a Dictated Scenario", 2012.

[15] www.cpj.org/2012/07/news-coverage-of-economic-sanctions-barred-by-iran.php.

are tools of transferring information out of Iran".[16] The articles also suggested that authorities have supported the development of a national intranet and plan to unplug the country from the worldwide Internet. However, several other news agencies have contradicted these reports.[17]

17. It has been reported that 19 netizens are currently detained in the Islamic Republic of Iran. Four of those detained, Vahid Asghari, Ahmad Reza Hashempour, Mehdi Alizadeh Fakhrabad and Saeed Malekpour, were sentenced to death in January 2012. The death sentence of Mr. Asghari and Mr. Malikpour has reportedly been upheld by the Supreme Court.[18] Allegations brought against all four reportedly include *moharebeh* (enmity against God) and *fisad-fil-arz* (corruption on earth); collaboration or engagement with foreign Governments; insulting leaders of the country; and launching and maintaining pro-opposition websites. Witnesses reported that all four men were psychologically tortured by means of long-term detention in solitary confinement, and with threats to arrest, torture or rape family members. All four men were also reportedly tortured with severe beatings for the purpose of eliciting confessions. In another case, Sakhi Righi was issued the harshest prison sentence ever served to a blogger in the country — 20 years — for "publishing false information" and committing "acts against national security".

18. In his report of March 2012 to the Human Rights Council, the Special Rapporteur highlighted the fact that, as a result of fear of persecution, at least 150 journalists had fled the country since the presidential elections of 2009,[19] with some recent reports estimating this number to be as high as 400.[20] He also reported that the Islamic Republic of Iran had detained more journalists than any other country in 2011. Of those detained, it is estimated that 50 per cent were kept in solitary confinement at some point during their detention; 42.8 per cent were forced into exile in 2010-2011; and half were serving sentences between 6 months and 19.5 years in prison on charges such as "working with hostile governments", "propaganda against the state", and "insulting religious sanctities".[21] On 21 May 2012, Fariborz Rais-Dana, an Iranian economist who criticized subsidy cuts by the Government, began a one-year jail term. Initially arrested on 13 June 2011, Mr. Dana was sentenced to one year in prison on charges including "illegal membership in a writers' association; preparation of press releases for seditionists; statements against the Government; interviews with the British Broadcasting Corporation and Voice of America; and accusing the Islamic Republic of prisoner abuse". The sentence was upheld by an appeals court.

19. On the basis of various media reports emanating from inside and outside the country, the Special Rapporteur estimates that at least 19 journalists were arrested

[16] www.pbs.org/wgbh/pages/frontline/tehranbureau/2012/05/news-foreign-email-banned-extensive-labor-layoffs-private-bank-dissolved.html; http://www.radiozamaneh.com/english/content/foreign-email-prohibited-iran; www.majzooban.org/en/news-and-exclusive-content/2395-foreign-email-prohibited-in-iran.html; www.guardian.co.uk/world/2012/jan/05/iran-clamps-down-internet-use; http://stream.aljazeera.com/story/halal-internet.

[17] http://english.farsnews.com/newstext.php?nn=8101300067; http://english.farsnews.com/newstext.php?nn=9101141301.

[18] https://spdb.ohchr.org/hrdb/20th/UA_Iran_16.02.2012_(2.2012).pdf.

[19] A/HRC/19/66, para. 52.

[20] www.bbc.co.uk/persian/iran/2011/05/110503_l19_iran_press_freedom_day.shtml.

[21] The Committee to Protect Journalists; see www.cpj.org/2012/02/attacks-on-the-press-in-2011-iran.php.

and detained between January and May 2012, and that 10 of these journalists have been released. Thirteen of those detained during this period were arrested during the months leading up to the parliamentary elections of March 2012. Interviewees and media reports also maintained that a number of journalists have been targeted by defamation charges. Also of deep concern is the number of detained journalists that have reportedly been denied reasonable access to medical treatment for psychological and physical illnesses and injuries that either existed prior to arrest, or were sustained during their detention as a result of torture and/or poor prison conditions. These individuals include Masoud Bastani, Issa Saharkhiz, Mohammad Sadigh Kaboudvand, Hossein Ronaghi Maleki, Saeed Matinepour, Mehdi Mahmudian, Kivan Samimi Behbani and Arash Honarvar Shojai.[22] At the time of writing this report, the Special Rapporteur learned that Hossein Ronaghi Maleki was released on bail of $815,000 on 2 July 2012 to seek medical treatment for kidney failure after he embarked on a hunger strike in May 2012 to protest against the authorities' refusal to release him for treatment.

20. In October 2011, the Head of the Ministry of Guidance reportedly announced that individuals that work with satellite networks must coordinate with his office and receive permission, and that "documentary makers, actors and film artists will only be allowed to collaborate with satellite networks that have no anti-regime agenda".[23] It was also asserted that the British Broadcasting Corporation and Voice of America are "intelligence arms of the United States like the CIA" and emphasized that collaboration with those networks "is not collaboration with the media but rather working with the security services of the enemy, and naturally it will be dealt with by the Intelligence Ministry". Six film-makers were reportedly arrested in September 2011 on charges of collaboration with the BBC.[24]

21. Of further concern are reports from independent journalists and from employees of Radio Farda and the BBC, who allege that their family members are frequently arrested, detained, interrogated and subjected to intimidation for the purpose of placing pressure on them to cease their reporting activities, or to solicit information. During interviews for this report, a BBC employee reported that his/her family member was detained and ordered to contact and encourage him/her to resign from the BBC. In another case, a family member of a BBC employee was reportedly arrested and pressured to contact the employee in London, who was subsequently subjected to an online interrogation. A number of reporters have also asserted that constant surveillance, along with the threat of arrest and detention of family members, created an atmosphere of fear which discourages family and friends located in the Islamic Republic of Iran from engaging with their family members that work for foreign media, establishing a situation of virtual exile for all involved.

22. Artists and intellectuals are also reportedly prosecuted for free speech activities. In May 2012, Mahmoud Shokraiyeh was sentenced to 25 lashings for drawing a caricature of a Member of Parliament. A $100,000 reward for anyone who kills the Iranian rapper, Shahin Najafi, was offered by an Islamist website for a song

[22] Ibid.

[23] http://www.radiozamaneh.com/english/content/security-chief-lays-out-rules-foreign-film-work.

[24] See A/HRC/19/82 (23 May 2012), and www.bbc.co.uk/news/world-middle-east-14976753; http://www.nytimes.com/2011/09/20/world/middleeast/iran-arrests-filmmakers-accused-of-working-for-bbc.html; www.cpj.org/2012/02/attacks-on-the-press-in-2011-iran.php; http://www.cpj.org/2011/09/iran-arrests-six-documentary-filmmakers.php.

that satirizes the Islamic Republic and addresses a historic religious figure.[25] In October 2011, the film-maker Jafar Panahi was charged with "assembly and colluding with the intention to commit crimes against the country's national security and propaganda against the Islamic Republic", and a sentence of six years in prison, along with a 20-year ban on film-making, writing screenplays, conducting interviews with the press and foreign travel was reportedly upheld by an appeals court. Mr. Panahi has filed an appeal with the Supreme Court.[26] Mohamed Rasoulof, another prominent film-maker, was sentenced to six years in prison on similar charges.[27]

B. Freedoms of assembly and association

23. Article 21 of the International Covenant on Civil and Political Rights protects peaceful assembly, permitting restrictions on only narrow grounds that threaten national security, public safety order, health or morals, or infringe on the rights and freedoms of others. The Covenant also guarantees freedom of association and the "right to form and join trade unions for the protection of (one's) interests".

24. In October 2011, the Government reported to the Human Rights Committee that article 26[28] of the Iranian Constitution does not conflict with the provisions of the Covenant, since limitations are enforced only in those cases stipulated by article 21 of the Covenant, and that article 27 promotes freedom of assembly within internationally accepted limits.[29] The Special Rapporteur maintains that these restrictions appear to predominantly curb freedoms of association and assembly, since they ostensibly function as norms rather than exceptions, and appear to primarily protect Government interests, rather than the interests of Iranian citizens. Moreover, recent legal developments[30] and reported Government actions seem to further infringe upon freedoms of association and assembly, which are crucial to the health of civil society, and to its function to criticize and advocate for policies that address issues of common concern. For example, independent unions are currently banned in the country, and the Association of Journalists was banned in 2009.

25. On the other hand, some non-governmental organizations that have met with the Special Rapporteur, including the Organization for Defending Victims of Violence[31] maintain that they are free to operate in the Islamic Republic of Iran, without Government interference. In its report issued late in 2012, the organization,

[25] www.reuters.com/article/2012/05/14/us-iran-germany-rapper-idUSBRE84D0NB20120514; http://isna.ir/fa/news/91030100591/; www.farsnews.com/newstext.php?nn=13910224000865.

[26] See A/66/361 (15 September 2011), and www.guardian.co.uk/film/2011/oct/18/jafar-panahi-loses-appeal-prison.

[27] Semi-official news (ISNA), 20 December 2011, available from www.isna.ir/isna/newsview.aspx?id=news-1677747&lang=p.

[28] Article 26 guarantees freedom of association except where there is violation of the "principles of independence, freedom, national unity, Islamic standards, and the foundations of the Islamic Republic".

[29] Article 27 states: "Unarmed assemblies and marches may be freely organized, provided that no violation of the foundations of Islam is involved".

[30] A/HRC/19/66, para. 16.

[31] The Organization for Defending Victims of Violence reported that the new law on non-governmental organizations prompted a strong reaction on the part of Iranian non-governmental organizations, which forced the parliament to suspend its passage and conduct a further review of the bill; see www.odvv.org/.

which describes itself as a "non-government, non-profit, non-political organization", reported that it worked to address 66 of the accepted recommendations in the universal periodic review through various conferences, educational courses, colloquiums, reports, and international and domestic affiliations.

Human rights defenders

26. In its comments and observations on the Special Rapporteur's report of March 2012 to the Human Rights Council, the Government released some information on specific cases presented in the Special Rapporteur's previous report. However, in doing so, it maintained the legitimacy of vaguely defined and overly broad charges such as "keeping top-secret information in order to make the same available to foreigners", "collusion with the intent to overthrow and acts against national security", and "false propagation against the governance of the Islamic Republic of Iran".

27. In two dozen interviews with the Special Rapporteur, human rights defenders reported being arrested and held incommunicado in solitary confinement for periods ranging from several weeks to 36 months, without charge or access to legal counsel. Most of them also reported that they were subjected to severe physical torture during interrogations, which were aimed at coercing confessions or soliciting information about other human rights defenders and human rights organizations. Methods employed reportedly included severe beatings with batons and other objects, mock hangings, electrocution, and actual rape. Other forms of psychological torture allegedly included sleep deprivation, denial of food and/or water, and threats of arrest, detention, rape or murder of family members. Several victims also reported being drugged with hallucinogens.

28. Many of the human rights defenders interviewed by the Special Rapporteur further reported that human rights defenders in general are subjected to unfair trials and issued severe sentences, including flogging, long-term activity and travel bans, long-term exile, and prison terms ranging from six months to 20 years. Interviewees also reported the arrest, detention and interrogation of family members and friends, and maintained that family and friends were threatened, insulted and tortured for the purpose of placing pressure on detainees, or to discourage them from public discussions about the situation of their loved ones.

C. Freedom of religion

29. In its third periodic report to the Human Rights Committee and its comments and observations on the Special Rapporteur's report of March 2012 to the Human Rights Council, the Government affirmed that the freedom to hold "any religious or political belief is guaranteed under the Constitution" and that "no one can be put to trial or punished, or deprived of social rights owing to a particular belief". They also noted that "the investigation of individuals' beliefs is forbidden, and no one may be harassed or taken to task simply for holding a certain belief". The Government also noted that, although Islam is the official religion of the country, Zoroastrians, Jews and Christians "freely exercise their faiths".

30. The Special Rapporteur is mindful of the country's constitutional provisions, and of the fact that apostasy does not appear as an offence in the draft Islamic Penal Code currently under consideration. However, other aspects of Iranian law and

procedures work to circumvent protections and undermine these rights, weakening the ability to protect and promote the ideals they represent. For example, article 167 of the Constitution, article 220 of the draft Penal Code and article 289 of the Criminal Procedures Code compel judges to issue verdicts and sentences on the basis of "authoritative Islamic sources and authentic fatwa" in the absence of codified prescription. Therefore, the Penal Code's silence does not prohibit capital punishment for individuals charged with apostasy. Rather, the code's reticence on the matter serves as a loophole, which potentially allows for the application of capital punishment in cases of apostasy.

31. Reports and interviews submitted to the Special Rapporteur also continue to portray a disturbing trend with regard to religious freedom in the country. Members of both recognized and unrecognized religions have reported various levels of intimidation, arrest, detention and interrogation that focus on their religious beliefs. Some reported that they were psychologically and physically tortured. A majority of interviewees maintained that they were repeatedly interrogated about their beliefs, when they adopted new beliefs, if they were from Muslim families, and/or about other members of their congregations and their activities. Several interviewees said that they had been charged with such crimes as *moharebeh*, *fisad-fil-arz*, and acts against national security, rather than apostasy.

1. Baha'i community

32. In its comments and observations on the Special Rapporteur's report of March 2012 to the Human Rights Council, the Government claimed that, while the Baha'i faith is not officially recognized, members have "equal legal, social and economic rights". The Government also characterized adherents of the Baha'i faith as members of a "cult" who are often encouraged to "infringe upon the law of the land". The Government's response appeared to qualify its actions as meeting the limitations built into article 18 of the International Covenant on Civil and Political Rights with regard to maintaining public order, national security, public health, or morals, without clarifying their claim that Baha'i actions may violate these conditions.

33. At the time of drafting the report, 105 members of the Baha'i community were reported to be in detention, up from 97 earlier in 2012. The Special Rapporteur also continues to receive reports that members of the Baha'i community face intimidation and arrest because of their religion. For example, on 17 February 2012, officials reportedly arrived at a charity event in Mashhad, demanded the cell phones of all present, required them to report on their personal details, and identify their religion in writing and in front of a video camera. Officials reportedly presented a warrant issued by the Intelligence Ministry to search the home of an individual charged of "committing a misdemeanour", despite the fact that the event was not being held at the residence of the individual they sought, nor was the individual present at the event. Moreover, individuals that identified themselves as Muslims were reportedly separated from Baha'is, questioned about their relationships with Baha'i attendees and released. The authorities then reportedly proceeded to arrest a number of Baha'is.

2. Christian community

34. It has been reported that more than 300 Christians have been arbitrarily arrested and detained throughout the country since June 2010, and that at least

41 individuals were detained for periods ranging from one month to over a year in prison, often without official charges. In some cases, detainees have allegedly been tortured and tried for serious crimes in the absence of fair trials, including legal counsel.

35. It has also been reported that church officials are required to inform authorities before admitting new members to their congregations; that members of certain congregations have been required to carry membership cards, which are reportedly checked by authorities posted outside congregation centres; and that meetings for evangelical services are restricted to Sundays. It was reported that Christians have been summoned, detained and interrogated, during which they are often urged to return to Islam if it is found that they have converted to Christianity, and threatened with arrest and apostasy charges if they do not comply.

36. Interviewees also reported that Christian churches, especially those of the evangelical and protestant denominations, are forced to operate underground, holding church services in private homes, called house churches, even though it is illegal to operate without permits. A pastor for the Church of Iran, Behrouz Sadegh Khanjani, reported during an interview that his church unsuccessfully attempted to obtain such a permit from the authorities, but asserted that since churches are not political parties or non-governmental organizations, they should not be legally required to obtain a permit under Iranian law.

3. Dervish community

37. Reports submitted to the Special Rapporteur allege that Gonabadi Dervishes endure attacks on their places of worship, and are frequently subjected to arbitrary arrest, torture and prosecution. The Special Rapporteur also examined reports regarding a series of attacks on the Dervish community, as well as arrests allegedly carried out from 3 to 14 September 2011 in the cities of Tehran, Shiraz and Kavar by volunteer paramilitary Basij forces. The attack reportedly resulted in five injured and some 200 arrested.[32] On 3 September 2012, the authorities, in a letter confirming the arrest of 200 followers of the Gonabadi Dervishes order, reported that with the exception of Saeed Goodarze, Masood Jafari Nokande, Gholam Reza Khojaste, Mohammad Hassan Janat, Abbas Haghneya, Hassan Jahaze, Davood Mozame Goodarze, Mohammad Goodarze, Abdolali Hooshmande, Abdul Saleme, Mohammad Reza Rezaifard and Fatollah Haghneya, cases against the others had been dismissed by the court owing to a faulty indictment.

38. During an interview, a website journalist, Farhad Nouri Koouchi, reported that plainclothes security forces attacked the town of Kavar on 1 September 2011, but that local police intervention resulted in the arrest of some 200 Dervishes who were blamed for the violence. The real attackers were allegedly allowed to remain in Kavar, which was placed under curfew. Mr. Koouchi further reported that security forces arrived at the offices of his news website, which covered the aforementioned developments, at 1 a.m. on 3 September. Authorities reportedly broke down the door, confiscated books, computers and office documents; surrounded all 12 employees with guns and arrested them, breaking the arm of one website reporter in the process. Later that day, three lawyers from the community, Amir Eslami, Afshin

[32] www.rferl.org/content/irans_dervishes_come_under_attack_again/24318940.html; www.iranhumanrights.org/2011/09/mostafa-azmayesh/.

Karampour and Gholamreza Shirzadi, who were reportedly invited by the Kavar Governor's Office to discuss the attacks, were also arrested.

39. It was also reported that the trial of 189 Dervishes who had been arrested in November 2007 began on 3 May 2012. The defendants were arrested at a protest against the demolition of their mosque and were reportedly charged with "acting against national security", "disrupting public order", "insulting the Supreme Leader", and "participation in a conflict". The trial was scheduled to be held over a 10-day period, during which 18 to 20 defendants per day were scheduled for trial in Branch 104 of the Boroujerd General Criminal Court. All charges, except for "disturbance of public order", were reportedly dropped. It was also reported that 22 lawyers volunteered to represent the defendants, but that only two attorneys were allowed to participate in the trial for all 189 individuals. The presiding judge reportedly asserted that the number of lawyers wishing to participate in the trial would disturb the proceedings.[33]

D. Administration of justice

1. The revised Islamic Penal Code

40. In his report to the Human Rights Council, the Special Rapporteur reported on the legal inequities that undermine the Government's commitment to equality for women and minorities. In its response to this position, the Government noted that "the Constitution of Iran has indiscriminately and equally provided for the protection of all subjects", and that "all citizens of the country, both men and women, equally enjoy the protection of the law and enjoy all human, political, economic, social, and cultural rights, in conformity with Islamic criteria".

41. However, the revised Islamic Penal Code continues to contravene international law and the aforementioned constitutional provisions on gender equality. For example, a woman's testimony in a court of law is regarded as half that of a man's and, despite amendments that now establish a monetary fund to equalize the *diya* (blood money) for men and women in the case of *qisas* (retribution in kind), a woman's life is still valued as half that of a man's.[34] The law also continues to treat girls and boys unequally, recognizing the legal culpability of girls at 9 years and boys at 14 years.

42. The Special Rapporteur also maintains that elements of the new law discriminate against non-Muslim Iranians, especially individuals whose religions are not recognized by the Iranian Constitution. For example, article 558 of the revised Islamic Penal Code stipulates that *diya* be equally distributed to religious minorities that are recognized by the Constitution. However, equitable application of the law does not apply to religions that are not recognized by the Constitution, such as the Baha'i. Moreover, article 311 states that "*qisas* shall be delivered only if the victim is equal in religion with the perpetrator", but that, when the victim is a Muslim, the fact that the murderer is a non-Muslim does not prevent the *qisas*, thereby discriminating against non-Muslims who are murdered, or incur bodily harm at the hands of a Muslim.

[33] www.majzooban.org/fa/exclusive/exclusive-news/3914-014e-.

[34] Article 554 of the new Islamic Penal Code of the Islamic Republic of Iran.

43. The Special Rapporteur also wishes to draw attention to articles 280 and 287 of the new Penal Code which define acts of *moharebeh* (enmity against God) and *fisad-fil-arzz* (corruption on earth) as capital offences. *Moharebeh* is defined as "drawing a weapon on the life, property or chastity of people or to cause terror as it creates the atmosphere of insecurity"; while *fisad-fil-arz* is defined, inter alia, as "crimes against national and international security of the state, spreading lies, disruption of the economic system of the state". These crimes are punishable by execution, crucifixion, amputation of the right hand and the left foot, or banishment. A number of interviews conducted and reports received by the Special Rapporteur show that individuals arrested for political and human rights-related activities are often charged with *moharebeh* and *fisad-fil-arz*.

44. The revised Penal Code appears to increase the severity of punishments for people charged with acts against national security. For example, individuals who are sentenced to flogging or imprisonment for national security charges cannot have their sentences suspended. The Special Rapporteur estimates that approximately 58 per cent of the human rights defenders, journalists, political and cultural rights activists, and religious and ethnic minorities interviewed for this report had been charged with acts against national security, which may be in contravention with the principle of legality enshrined in the International Covenant on Civil and Political Rights.

2. Rights of due process

45. In its comments and observations on the Special Rapporteur's report of March 2012 to the Human Rights Council, the Government referred to numerous constitutional and Penal Code provisions that provide for access to a lawyer and for the presumption of innocence. These rights are guaranteed in articles 32 and 34 to 39 of the Constitution, and effectuated by the Law of Respecting Legitimate Freedoms and Citizenship Rights (2004), which determines the criminal procedure and defines standards for a fair trial.[35] Legal provisions allow officials to pursue property searches and arrests only as a result of "judicial decisions and warrants that are clear and transparent"; forbid "harassing individuals by blindfolding, shackling, humiliating or demeaning them"; prohibit the use of torture to gain confessions, and regard coerced confessions as illegitimate evidence.

46. A large number of interviews conducted for this report recounted violations of international human rights law and of the aforementioned national provisions. Of the 99 individuals interviewed, three quarters reported that their property was searched and/or that they were arrested without being presented with warrants. Approximately 73 per cent of those interviewed alleged that they were blindfolded during interrogations; 58 per cent reported the use of prolonged solitary confinement; 62 per cent reported intimidation of family members for the purpose of placing pressure on the target of interrogations; 78 per cent stated that they were beaten during interrogations; and 8 per cent reported being hung from ceilings for the purpose of soliciting confessions. Moreover, 64 per cent of those interviewed alleged that they were denied adequate access to a lawyer after the investigative phase of their case, and another 82 per cent stated that they believed that the judge had already made up his mind about their case, and that he was being directed by the Prosecutor's Office.

[35] www.bia-judiciary.ir/tabid/144/Default.aspx.

47. Ahmed Hamid, a lawyer who represented 19 individuals who were prosecuted in Khuzestan Province for "acting against national security", maintained that he was allowed access to his clients only two days before the trials, for five minutes, in the presence of security forces. Mr. Hamid reported that his objections and assertions in court about his clients' right to see him prior to their trial were ignored by the judge, and that his clients were prosecuted in a trial held within three days for all 19 defendants. He also maintained that, while his clients did not speak Farsi, they were not provided with interpretation, and therefore did not understand what had transpired during their trial. He further indicated that he was allowed to submit a written defence only after the trial, and although he and other actors in the case submitted thousands of pages to the presiding judge, the caller made his decision in an hour. The judge sentenced 10 of the defendants to death. Moreover several of his clients were executed in secret with .t his knowledge or that of family members, while their case was being reviewed b an appeals court.

48. In his interactive dialogue of March 2012 with the Human Rights Council, the Special Rapporteur reported on the case of Loqman Moradi and Zanyar Moradi, who were both sentenced to public hanging on the charge of *moharebeh*. According to reliable sources, both men vehemently denied the charges, but were forced to confess as a result of severe beatings, and threats of rape and arrest of family members. These sources also maintained that authorities informed Zanyar Moradi that he had legal counsel on the day of his trial, while Loqman Moradi was allowed to meet with his attorney two days prior to his trial after a year in detention. The Special Rapporteur later reviewed video produced by Press TV, which reported on the confessions of both men. Reliable sources reported that both men were forced to rehearse answers to questions they were asked during the televised interview.[36]

3. Independence of the legal community

49. The Special Rapporteur joins the International Bar Association[37] in expressing deep concerns over the effects of the Bill of Formal Attorneyship on the independence o. the Bar Association in the Islamic Republic of Iran. The bill reportedly increases Government supervision over the Iranian Bar Association through the establishment of a seven-member commission of "judges, lawyers and attorneys appointed by the Head of the Judiciary for a period of four years". That Commission is in charge of examining the "competence" of individuals that apply to sit on the Board of the Bar Association, and has the power to suspend members of the Board if it determines them to be incompetent. The Bill also directs the Commission to "examine and pronounce itself on decisions made by the High Council of Attorneyship and Provincial Organizations of Attorneys, from the viewpoint of adherence to Sharia law, public interests, people's acquired rights". The bill also grants the Commission the power to issue or revoke attorneys' licences, and therefore has the potential to produce a legal community governed by the views of the judiciary and the Government, rather than acting as an independent actor in defence of the rights of the people.

[36] www.youtube.com/watch?v=J2Y7gJ5hNY&feature=autoplay&list=PLB44834DAB7FA4029&playnext=1; www.youtube.com/watch?v=KtwD4odmNgc&list=PLB44834DAB7FA4029&index=80&feature=plpp_video; www.youtube.com/watch?v=Qij5lawbWbQ&list=PLB44834DAB7FA4029&index=79&feature=plpp_video.

[37] www.ibanet.org/Article/Detail.aspx?ArticleUid=F32AAFBC-F91B-4A5E-9979-0F0807859D22.

50. The Special Rapporteur is also alarmed by reports of Government actions targeting lawyers. He maintains that these have grave implications for the health and efficacy of the judicial system, which requires lawyers to rigorously practise their profession in defence of their clients. During a number of interviews, members of the Iranian legal community reported that they were harassed, threatened, arrested and detained for discussing their clients' cases with members of the press. They reported that they were also deprived of reasonable contact and access to family and legal counsel, and some reported that they were subjected to severe beatings and other forms of ill-treatment and torture for the purpose of soliciting confessions.

51. It is estimated that some 32 lawyers have been prosecuted by the Government since 2009, and that at least nine defence attorneys are currently detained.[38] Their sentences range from six months to 18 years in prison on various charges, including "propaganda against the regime"; creating public anxiety; "committing security crimes"; "giving interviews to foreign media"; "acting against national security"; "anti-regime propaganda by giving interviews"; and "propagating lies".[39] Some lawyers were also banned from practising law.

4. Situation in prisons

52. In its comments and observations on the Special Rapporteur's report of March 2012 to the Human Rights Council, the Government argued that "all prisons of the Islamic Republic of Iran are under direct supervision of prosecuting attorneys and their deputies. They may inspect prisons at any time and, at any case of infringement, they may sue violators." However, the Special Rapporteur continues to receive reports about disturbing prison conditions and treatment of detainees.[40] Several actors connected to Orumiyeh Detention Centre and Rajai Shahr Prison reported that political prisoners continue to be deprived of adequate access to medical services, which has allegedly led to the death of at least two detainees in Rajai Shahr Prison, including Mansour Radpour. They also reported on the deterioration of the health of political prisoners who reportedly face poor hygienic conditions, deprivation of proper nutrition, and infrequent access to family members. A number of individuals have reported that they submitted complaints about violations of their rights to the authorities, but that no investigation had been undertaken in accordance with Iranian law.

5. Torture, cruel and degrading punishments and executions

53. The Special Rapporteur joins the Secretary-General in his concern about the frequent use of torture, amputations and flogging, as well as the increasingly frequent application of the death penalty, including in public, and in cases of political prisoners.

54. The revised Penal Code omits stoning. However, as stated earlier, several provisions in the Iranian Constitution and Penal Code compel a judge to "deliver his

[38] Amnesty International, "We are ordered to crush you: expanding repression of dissent in Iran", 28 February 2012.

[39] International Campaign for Human Rights in Iran; see www.iranhumanrights.org/2012/02/iranian-bar-anniversary/.

[40] Severe overcrowding also remains an issue of grave concern. In a prison with a capacity of 3,000 inmates, for instance, 13,000 inmates are held; see www.isna.ir/isna/newsview.aspx?id=news-1886012&lang=p.

judgement on the basis of authoritative Islamic sources and authentic fatwa" in the absence of codified provisions. There is a risk, therefore, that judges can still sentence individuals to death by stoning for adultery.

55. Unpublished data submitted to the Special Rapporteur show that 3,766 flogging sentences have been implemented since 2002, the highest number of floggings in 2009, totalling 1,444. The three most frequent charges in these cases were (a) illicit relationships, including adultery, participating in mixed gender parties, and debauchery; (b) drug-related offences, including drug use, addiction, trafficking or smuggling; and (c) public disruption offences, including assistance in destroying governmental and non-governmental buildings, and acting against the Government, and participating in illegal gatherings. The latter was one of the most frequent charges against those sentenced to flogging in 2009.[41]

56. The Special Rapporteur also continues to raise concerns about the use of capital punishment, including for crimes such as alcohol consumption, adultery and drug-trafficking, which do not constitute serious crimes by international standards. In June 2012, two men were sentenced to death for consuming alcohol for the third time.[42] At least 141 officially announced executions are known to have been carried out between January and early June 2012. Several sources have reported that another 82 secret executions would have been carried out during the same time period, and that there were 53 executions across the country during one week in May 2012;[43] the majority of executions were reportedly related to drug offences.[44] A large number of those sentenced to death were convicted in the absence of fair trial standards.

IV. Economic, social and cultural rights

57. As pointed out in its national report for the universal periodic review, the Islamic Republic of Iran has achieved a number of positive advances in education and reducing infant and maternal mortality rates, putting the country on track to accomplish a number of Millennium Development Goals. However, in addition to the narrowing of public space to criticize or advocate for policies that affect the public interest, it has been reported that restrictions on workers' rights; deprivation of education, cultural and language rights; and the existence of certain discriminatory practices continue to create obstacles to the realization of economic, social and cultural rights, especially for minorities.

The rights to education, economic, social and cultural development

58. The Labour Code of the Islamic Republic of Iran grants workers the right to form "Islamic associations" and "guild societies", subject to the "approval of the Council of Ministers".[45] The country is also a member of the International Labour Organization. In its comments and observations on the Special Rapporteur's report of March 2012 to the Human Rights Council, the Government noted that "labour

[41] Abdorrahman Boroumand Foundation, Washington, D.C.; see www.iranrights.org/.

[42] www.guardian.co.uk/world/2012/jun/25/iranian-pair-death-penalty-alcohol; http://isna.ir/fa/print/91040401521/.

[43] Ibid.

[44] Iran Human Rights; see http://iranhr.net/.

[45] Labour Code of the Islamic Republic of Iran, chapter VI (20 November 1990).

law and the law of political parties, societies, trade unions and professional associations define the parameters of trade union activity. In this context a particularly active labour organization covering 1,450 workshops and factories nationally represents the interests of all workers". Any measures taken against labour groups or leaders were, according to the Government, "a response to the disturbance of public order and security and were taken to prevent social mayhem and disruption of the country's administration".

59. In interviews with the Special Rapporteur, labour rights activists reported that attempts to organize workers' guilds or strikes had been met with severe penalties, which poses grave implications for workers' ability to pursue their interests. A member of the Iranian Teachers Trade Association maintained that the activities of teachers' unions have been increasingly met with punitive actions and violent repression since 2007. That person maintained that the Government had banned independent unions following a series of teacher protests in 2007, and that activists had suffered pay cuts and been forced into retirement. The same person stated that activists in his/her union were often arrested, detained and tortured during interrogations, that they were charged with crimes against national security, and issued severe penalties and harsh sentences for activities aimed at improving education for students and improving the working conditions of teachers nationwide.

60. Furthermore, it continues to be reported that students are being deprived of education as a result of their political activities. Members of the now banned student association, Daftar Tahkim Vahdat, have reported that from March 2009 to June 2012 they identified 396 cases of deprivation of education as a result of expulsion or prohibition from entering university campuses for a given period; 52 of these cases reportedly occurred in 2012.

61. Similarly, interviews with 50 members of minority communities, including Ahwazi Arabs, Azerbaijanis and Kurds, highlighted restrictions on the use of mother-tongue languages in academic institutions which have deprived minorities of adequate access to education, and have prevented them from benefiting from the gains the Islamic Republic of Iran has made in literacy and enrolment rates. In its report of March 2012 to the Committee on Economic, Social and Cultural Rights, the Unrepresented Nations and Peoples Organization presented a study conducted in 1998 by Alireza Sarafi, which highlighted the effects of language rights restrictions on the enrolment rates of ethnic minorities in the country. Data in this study demonstrate a considerable disparity between non-Farsi and Farsi speakers in higher education.

I. Non-Farsi speakers	*II. Native Farsi-speakers*	*III. Enrolment in higher education*
42%	58%	College degree
36%	64%	Undergraduate
12%	88%	Postgraduate
10%	90%	PhD and doctorate

Source: Report submitted in March 2012 by the Unrepresented Nations and Peoples Organization to the Committee on Economic, Social and Cultural Rights at its forty-ninth session for the consideration of the second report of the Islamic Republic of Iran by the Pre-Sessional Working Group.

62. Recent reports also indicate that development policies and gozinesh practices, which employ ideological screenings to regulate access to education and employment, continue to have a negative impact on religious and ethnic minorities across the country. Moreover, in his 2005 report, the Special Rapporteur on adequate housing highlighted the disproportionately poor services, housing, and living conditions of minority communities, and reported that forced evictions and expropriation of land for State-directed agricultural and industrial development seemed to disproportionately target the property of religious and ethnic minorities.

1. The Arab community

63. Arabs reportedly experience high drop-out rates as a result of the lack of education in their mother tongue, and Ahwazi students drop out of schools at a rate of 30 per cent at elementary level, 50 per cent at secondary level, and 70 per cent at high school level. Illiteracy rates among Ahwazi Arabs are reported to total over 50 per cent of the population.[46] Furthermore, publications such as newspapers and educational materials in Arabic are reportedly prohibited. Despite the fact that between 80 and 90 per cent of the country's oil comes from Khuzestan Province, it has been reported that local communities do not benefit from the wealth inherent to the area.[47] Several interviewees also maintained that there was a shortage of water, electricity and sanitation in Khuzestan and that, despite water shortages in the province, water from the local Karun River was being diverted to other provinces.

64. It has been estimated that 4 million Arabs live in impoverished urban slums, and that homes continue to be destroyed in order to facilitate State-sponsored development.[48] In April 2005, a controversial letter allegedly written by a presidential adviser that discussed policies for the relocation of Arabs to other parts of the country, and the planned resettlement of non-Arabs to Khuzestan, was leaked.[49] Protests against the contents of the letter were allegedly met with violence by security forces, leading to the death of at least two children, and the arrest and injury of hundreds of protesters. The alleged author of the letter has reportedly denied the letter's authenticity. In interviews with the Special Rapporteur, members of the community reported that Ahwazi Arabs had been forcibly evicted from their property, undercompensated for their land, and were often left without access to adequate housing, sanitation or clean water.

65. Interviewees also maintain that their objections to discriminatory and development policies in the form of peaceful protests and dissemination of educational literature are often met with arbitrary arrest, detention and prosecution. A majority of interviewees reported that they were subjected to long periods in solitary confinement, denied family visits, subjected to torture for the purpose of soliciting false confessions, and denied legal counsel and interpretation during their trials.

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[46] Unrepresented Nations and Peoples Organization, "Alternative report submitted to the Committee on Economic, Social and Cultural Rights for the consideration of the second report of the Islamic Republic of Iran during the 49th Pre-Sessional Working Group" (March 2012).

[47] In 2006, the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living reported that cities and towns in Khuzestan Province lacked basic services, which negatively affected the population's health (see E/CN.4/2006/41/Add.2, 21 March 2006).

[48] Unrepresented Nations and Peoples Organization, "Ahwazi Arabs", June 2010.

[49] Ibid., p. 2; and www.amnesty.org/en/library/asset/MDE13/056/2006/en/4eac11e0-d429-11dd-8743-d305bea2b2c7/mde130562006en.pdf.

66. In June 2012, the Special Rapporteur joined the Special Rapporteurs on summary executions and torture in condemning the execution of four Arabs who were arrested in April 2011 at a protest. Abdul Rahman Heidarian, Abbas Heidarian, Taha Heidarian and Ali Sharif were reportedly sentenced to death on charges of *moharebeh* and *fisad-al-arz* in the absence of fair trial standards. In a video plea to the Special Rapporteur, all four defendants denied the charges, maintained that they were tortured for the purposes of soliciting a confession, and maintained that they were sentenced to be hanged in unfair trials.[50] All four men were executed on or around 19 June 2012. Family members were reportedly informed of the execution after it had been carried out. Mohammad Ali Amouri, Sayed Jaber Alboshoka, Sayed Mokhtar Alboshoka, Hashem Sha'bani Amouri and Hadi Rashidi, also members of the Arab community, were sentenced to death on similar charges.

2. Azeris

67. A number of interviews and communications from non-governmental organizations report that Government policies and actions hinder the educational, economic, social and cultural development of Azeris. They assert that the native language of Azerbaijanis is not represented in available media, including newspapers; that a number of Azeri educational and literary journals, like the monthly journal *Dilmaj*, have been closed since 2007; and that Azerbaijani language websites are prohibited. Likewise, Azerbaijanis are reportedly prohibited from teaching in their mother tongue in primary and secondary schools, resulting in one of the highest illiteracy rates among an ethnic group in the country. They also report that artists are prohibited from organizing or participating in cultural activities and that Azerbaijani businesses cannot operate under Azerbaijani or Turkish names.

68. Reports received also suggested the arrest and/or harassment of individuals that attend cultural and political events at locations such as Babek Castle in the town of Kalayber. Reports maintained that demands for language rights are continuously refused and viewed as "unpatriotic", and that individuals that openly criticize Government policies often face punitive measures such as arrest, detention, prosecution and harsh sentences for crimes against national security and the regime.

69. The Special Rapporteur continues to draw attention to the effects of development policies on communities surrounding Lake Urmia, which is located between the East Azerbaijan and West Azerbaijan regions of the Islamic Republic of Iran. It has been reported that the redirection of water from the lake is predominantly responsible for a rapid fall in water levels, resulting in the loss of more than half the lake's water.[51] It is feared that, in addition to increased pressure on agriculture, dwindling supply will result in devastating environmental consequences that will have lasting effects on the densely populated region surrounding the lake.

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[50] www.alarabiya.net/articles/2012/07/04/224488.html; and www.youtube.com/watch?v=tp7zrBF-3ec.

[51] United Nations Environment Programme, "The drying of Iran's Lake Urmia and its environmental consequences", February 2012.

V. Rights of the child

A. Executions, cruel and degrading punishment

70. The Convention on the Rights of the Child forbids executions of juveniles, life imprisonment and the mixing of children with adults in prison. A number of recommendations in the universal periodic review also called upon the Islamic Republic of Iran to abolish capital punishment in juvenile cases. Article 146 of the new Penal Code states that "immature children have no criminal responsibility", while article 90 limits culpability to those that understand the nature of their crimes, and, if this standard is not met, juveniles may still be subject to the death penalty under Iranian law.

71. According to a report of May 2012,[52] the Deputy for Management and Expansion of Prisons announced that 70 children that had not committed any crime lived in prisons because their mothers were imprisoned. However, the report also indicated that statistics on the phenomenon vary, and drew attention to the work of Farshid Yazdani, who believes that at least "450 children live in prisons alongside their mothers". In addition to being deprived of childhood experiences, these children are also exposed to poor prison conditions, including poor hygiene and malnutrition, which drastically impair their physical, emotional and cognitive development and place them at a serious disadvantage when they are released with their parent. It was also reported that no special measures were taken by authorities to shield these children from violence. In an interview for this report, a journalist reported that a 3-year-old child was raped by a female detainee during her detention, and that although the authorities were made aware of the situation no investigation was conducted.[53]

72. Other reports maintain that infants and children are sometimes used to increase pressure on mothers, or to punish criticism of the Government. For example, several detainees reported that they could hear the screams of a mother and her infant during a female detainee's interrogation. The mother was allegedly prevented from feeding her infant until she cooperated with the authorities, who wanted to know the whereabouts of her husband. Another interviewee reported to the Special Rapporteur that beatings and other forms of mistreatment rendered her incapable of nursing her son, and that at one point she was rendered unconscious for three days and does not know who took care of her son, or if and what he was fed.

B. Child marriage

73. The Special Rapporteur is also deeply concerned about reports that the Legal Affairs Committee of the Iranian Parliament has announced that the law that prohibits the marriage of girls below the age of 13 is considered to be "un-Islamic

[52] www.ihrv.org/inf/?p=5079.

[53] The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) stress that any decision to allow children to stay with mothers shall be based on the best interest of the child and that the environment provided for such children's upbringing inside prisons shall be as close as possible to that of a child outside prisons. See http://daccess-dds-ny.un.org/doc/UNDOC/LTD/N10/561/94/PDF/N1056194.pdf?OpenElement.

and illegal". Some statistics indicate that in June and July 2012 more than 75 girls under 10 were forced to marry much older men.[54] A majority of these cases are reported in southern provinces including Hormozgan, Sistan and Baluchestan and Khuzestan. It was further reported that a conservative lawmaker for the Parliament's Legal Committee stated that the law must regard 9 as being the appropriate age for a girl to have reached puberty and qualified to get married; to do otherwise would be to contradict and challenge Islamic sharia law; he said that he would seek to change current legislation to permit such marriages.[55]

VI. Conclusions and recommendations

74. **The Special Rapporteur has catalogued a wide range of human rights violations since the submission of his first interim report to the General Assembly. He asserts that these violations are products of legal incongruities, insufficient adherence to the rule of law, and the existence of widespread impunity. This situation undermines the Government's ability to adhere to its international commitments, and undercuts its capacity to advance the recommendations accepted during its universal periodic review, as well as those produced by treaty body reviews and the other special procedures mandate holders. Therefore, the Special Rapporteur concludes that specific attention must be paid to legislation that serves to attenuate and abrogate rights guaranteed by the five international instruments to which the Islamic Republic of Iran is a party. Impunity must also be addressed in order to facilitate accountability, provide redress for human rights violations and strengthen the rule of law, all of which are required to effectively promote respect for human rights in the country.**

75. **The Special Rapporteur also concludes that insufficient progress results from the country's reluctance to substantively engage with the international community on recurring matters of concern. He continues to assert that his mandate should not be viewed as a punitive measure, but should be regarded as an opportunity to frequently and substantively engage the international community in a non-politicized, transparent and constructive forum.**

76. **The submissions and interviews considered for this report provide a deeply troubling picture of the overall human rights situation in the Islamic Republic of Iran, including many concerns which are systemic in nature. The Special Rapporteur urges the Government to reconsider legislation reviewed in his current and previous reports, as well as other aspects of the country's legal framework that infringe on those human rights promulgated by international human rights treaties.**

77. **Furthermore, the Special Rapporteur again emphasizes the need to explicitly define actions that constitute crimes against national security, and encourages the Government to guarantee the space for public criticism or advocacy through peaceful activities that are protected by international law. He**

[54] www.majzooban.org/en/news-and-exclusive-content/2688-iran-seeks-to-legalise-marriage-for-girls-under-10-.html; www.globalawareness101.org/2012/07/iran-iranian-parliament-seeks-to.html; www.ihrv.org/inf/?p=5051.

[55] Article 1049 of the Civil Code allows for early marriages, namely, 13 lunar years for girls and 15 lunar years for boys.

calls on the Government to ensure that restrictions on freedom of expression and the right to information are "content-specific", as called for by the Human Rights Committee in its General Comment 34 on article 19.

78. **The Special Rapporteur also continues to underline the importance of perpetuating a culture of tolerance, and urges the Government to prevent discrimination against women and girls, as well as religious and ethnic minorities, in all spheres of public life and services, and to protect their freedoms to freely associate and express themselves. He further calls on the Government to ensure that the minimum age for marriage complies with international standards and that measures to prevent the forced, early and temporary marriage of girls are established.**

79. **The Special Rapporteur again emphasizes his concern about alleged violations of rights of due process, and requests that the Government investigate allegations of physical and psychological torture and the denial of due process rights. In this regard, the Special Rapporteur also re-emphasizes the need for an extensive, impartial and independent investigation into the violence in the weeks and months that followed the presidential election of 2009. He reiterates his call for the immediate release of all political prisoners and prisoners of conscience, including those alluded to in the current and previous reports; requests that the treatment of prisoners meet minimum international and national standards; and that prisoners are granted adequate access to medical care, in accordance with international standards and Iranian law.**

80. **The Special Rapporteur continues to deplore the use of stoning as a form of capital punishment, and continues to strongly urge the Government to enforce its moratorium on stoning, to consider the reversal of existing stoning sentences, and to consider explicitly prohibiting its use. The Special Rapporteur also reiterates his concern about the implementation of the death penalty including in cases that do not meet the "most serious crimes" standards, as stipulated by international law. He calls on the Government to consider revisiting its qualification in the revised Islamic Penal Code on the use of capital punishment for juveniles and to consider prohibiting juvenile executions; and reiterates his call for a moratorium on the implementation of capital punishment sentences until such time as fair trial standards for capital cases can be adequately demonstrated.**

81. **The Special Rapporteur also joins the treaty bodies and other special procedures mandate holders that have emphasized the need to strengthen effective safeguards against human rights abuses. To that effect, he continues to emphasize the need to establish an effective national human rights mechanism that is compliant with the Paris Principles, in order to ensure that violations of human rights are investigated and sufficient remedies are provided.**